

Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation – Romania

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Executive summary

Implementation of Employment Directive 2000/78/EC

- [1]. Romania adopted comprehensive anti-discrimination legislation as early as 2000. The defining element for the Romanian case is the transposition of both directives in one piece of legislation, subsequently amended to increase compliance with the European norms, and the establishment of one common national equality body to deal with all forms of discrimination, including sexual orientation.¹ Gender identity and expression are not explicitly mentioned as protected grounds but they are covered by a catchall phrase: ‘any other criterion’.²
- [2]. The Law on Equal Opportunities Between Women and Men indirectly protects sexual orientation without explicitly mentioning it.³ The law does not cover transgender status. Transgender people are not explicitly protected by any Romanian law.⁴
- [3]. The national equality body, *Consiliul National pentru Combaterea Discriminarii* [National Council on Combating Discrimination (NCCD)] started *ex officio* investigations in a number of relevant cases on sexual orientation discrimination and also received complaints from human rights NGOs and from individual victims of discrimination.⁵

Freedom of movement

- [4]. Even if Romanian legislation does not provide for a definition of partnership between Romanian citizens, Ordinance 30/2006 includes a definition of partnership for citizens of EU Member States for the purposes of free

1 Romania/ *Consiliul National pentru Combaterea Discriminarii* [National Council for Combating Discrimination (NCCD)]. The official website of the institution is available at: <http://www.cncd.org.ro> (10.01.2008).

2 For definitions of sexual orientation and gender identity see, Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, available at: http://www.yogyakartaprinciples.org/principles_en.htm (25.02.2008).

3 Romania/ *Lege 340/2006 pentru modificarea și completarea Legii nr. 202/2002 privind egalitatea de șanse între femei și bărbați* [Law 340/2006 for the amendment and approval of Law 202/2002 regarding equal opportunities between women and men] (25.07.2006).

4 ACCEPT, IGLHRC, ILGA Europe, joint submission to the United Nations Human Rights Council, under the Universal Periodic Review, available at www.ighrc.org (08.02.2008).

5 The NCCD decided in cases of discrimination in labour relations, including testing of teachers and denial of employment on grounds of sexual orientation, access to health services, access to transportation services, discrimination resulting from harassment, victimisation or the denial of the right to dignity. See Annex 1 for a presentation of relevant case law from the NCCD.

movement and residence in Romania, which defers to the legislation of the country of origin. The partners of EU citizens have free access to Romanian territory if their partnership is valid in their Member State of origin. This regime is applicable also to de facto cohabitation and same-sex partnerships, provided they are recognised by the national legislation in their Member State of origin.

- [5]. Unmarried partners of single Romanian citizens can join their partners only if they have at least one child together with the sponsor. The law does not distinguish between same-sex or opposite-sex partners.

Asylum and subsidiary protection

- [6]. Sexual orientation may be considered a common denominator to justify membership of a particular social group as a ground for persecution for the purpose of seeking refugee status.
- [7]. The Romanian transposition of Article 2(h) of the Qualification Directive does not include unmarried partners among the family members in the context of asylum or subsidiary protection.

Family reunification

- [8]. Foreigners granted refugee status or subsidiary protection can request family reunification for the husband/wife only if the date of the marriage predates the date when any of these forms of protection were established

Freedom of assembly

- [9]. Marches with a pro-LGBT, pro-equality message have been organised since 2005. Though the authorities initially refused to allow the march in 2005, eventually these events started taking place and generated a vigorous counter-reaction from religious groups, conservative and nationalistic parties, as well as neo-Nazi groups. The authorities protected the participants on the pro-gay marches effectively but failed to take adequate measures against the counter-demonstrations when they degenerated into violent, illegal riots.

Hate speech and criminal law

- [10]. The *Codul Penal* [Criminal Code] was amended in 2006 to include incitement to discrimination based on all grounds of discrimination sanctioned by the

Legea Antidiscriminare [Anti-discrimination Law], including sexual orientation. The same amendment introduced discriminatory intent as aggravating circumstance in the commission of the offences. The implementation of these provisions by the law-enforcement agencies is not satisfactory.

Transgender issues

- [11]. Romanian legislation does not mention the term ‘transgender’ or equivalent terms. Transgender people are theoretically protected by the provisions of the anti-discrimination legislation but have to bear the consequences of the legislative gap in relation to modifying identification data or undergoing a change of sex. Operating any changes in the civil status requires a court decision which, in practice, is based on a certificate issued by the *Institutul Național de Medicină Legală* [National Institute for Legal Medicine], following a very intrusive and arbitrary procedure, developed ad hoc to fill a legal vacuum.

Miscellaneous

- [12]. Some themes are important for sexual minorities: the lack of relevant statistical data which would allow more effective policy making, the denial of access to marriage and partnership but also the increased violence, including sexual violence against homosexuals or detainees from vulnerable groups in penitentiaries.

Good practices

- [13]. Strategic litigation has been used by the NGO ACCEPT to promote non-discrimination in access to services.

A. Implementation of Employment Directive 2000/78/EC

- [14]. In an attempt to harmonise Romanian legislation with European standards, prior to EU accession, in 2000 the government adopted legislation responding to the needs served by both the Employment Directive and the Racial Equality Directive.⁶ The law was adopted following a joint effort by civil society and human rights experts and the *Departamentul pentru Protectia Minoritatilor Nationale* [Department for the Protection of National Minorities] and used as framework advanced drafts of the European Directives.⁷ The law was amended subsequently in 2002, 2003, 2004 and 2006, to enhance harmonisation.
- [15]. Explicit protection of sexual orientation and the subsequent work on LGBT-related cases by the national equality body is highly commendable given the level of rejection of homosexuality manifested by Romanian society. LGBT people remain the most rejected group according to statistics.⁸
- [16]. The Public Opinion Barometer of the Soros Foundation, published in December 2007, found that in the last three years, homosexuals remained one of the most rejected categories of the population: as at October 2007, 61 per cent of the respondents declared that they would not want to have a homosexual neighbour.⁹

6 Romania/ Law 48/2002 concerning the adoption of the Government Ordinance 137/2000 regarding the prevention and the punishment of all forms of discrimination (31.01.2002); see also Romania/ Government Ordinance 77/2003 for the amendment of the Government Ordinance 137/2000 regarding the prevention and the punishment of all forms of discrimination, (30.08.2003); see also Romania/ Law 27/2004 concerning the adoption of the Government Ordinance 77/2003 for the amendment of the Government Ordinance 137/2000 regarding the prevention and the punishment of all forms of discrimination (11.04.2004); see also Romania/ Law 324/2006 for the amendment of the Government Ordinance 137/2000 regarding the prevention and the punishment of all forms of discrimination, (20.07.2006).

7 Renate Weber, Romania: Legal analysis of national and European anti-discrimination legislation; A comparison of the EU Racial Equality Directive & Protocol N° 12 with anti-discrimination legislation (2001), available at <http://www.migpolgroup.com/multiattachments/2426/DocumentName/Romaniaelectronic.pdf> (10.01.2008).

8 In December 2005, NCCD published the results of an official survey stating that 61 per cent of the interviewees avoid having relations with homosexuals. This is the highest rejection percentage, Roma ranking second with 34 per cent and persons living with HIV/AIDS ranking third with 26 per cent. The sample consisted of 1,238 Romanians and the margin of deviation amounts to ± 2.8 per cent for a probability of 95 per cent. The survey can be found at: <http://www.cncd.org.ro/biblioteca/Sondaje-4/> (06.02.2008).

9 G. Bădescu, M. Comșa, D. Sandu, M. Stănculescu, *Barometrul de Opinie Publică*, October 2007, BOP 1998-2007, available at http://www.fsd.ro/ro/evenimente_detalii.php?eveniment=28 (17.12.2007). The same survey conducted in 2005 revealed a rejection rate of 51 per cent and when conducted in October 2006 revealed a 61 per cent rejection rate. In these surveys LGBT people rank third in the question on rejecting particular groups as neighbours, after people who are addicted to drugs and alcoholics.

A.1. Concepts defined by national anti-discrimination legislation

- [17]. Anti-discrimination legislation sanctions ‘any difference, exclusion, restriction or preference based on race, nationality, ethnic origin, language, religion, social status, beliefs, sex, sexual orientation, age, disability, chronic disease, HIV positive status, belonging to a disadvantaged group or any other criterion, aiming to or resulting in a restriction or prevention of the equal recognition, use or exercise of human rights and fundamental freedoms in the political, economic, social and cultural field or in any other fields of public life’.¹⁰
- [18]. Though the law does not explicitly mention gender identity and expression, including transsexualism, a catch-all phrase ‘any other criterion’ would apply in conjunction with a wider interpretation of sexual orientation.
- [19]. Even though not all the legal concepts present in the two Directives were initially transposed into law, due to subsequent amendments, Romanian legislation covers both direct and indirect discrimination and also includes other relevant legal institutions¹¹ such as: indirect discrimination;¹² multiple

10 Art. 2, Romania/ Law 324/2006 for the amendment of the Government Ordinance 137/2000 regarding the prevention and the punishment of all forms of discrimination, (20.07.2006) .

11 A. Tabacu, R. Iordache (2003), ‘Not Yet Viable: Discrimination Action in Romania’ in: *Roma rights /2003* pp. 61-70, available at http://errc.org/tr_nr1-2_2003/noteb6.shtml.

12 Art. 2.(2), Romania/Ordinance 77/2003 for the amendment of the Government Ordinance 137/2000 regarding the prevention and the punishment of all forms of discrimination (30.08.2003): ‘Any provisions, criteria or practices apparently neutral which disadvantage certain persons on grounds of one of the protected groups, excepting the cases when these practices, criteria and provisions have an objective justification based on a legitimate purpose and the methods used to reach that purpose are adequate and necessary.’

discrimination;¹³ positive action;¹⁴ harassment;¹⁵ victimisation;¹⁶ and instruction to discriminate.¹⁷

[20]. The internal legal framework makes no reference to standards detailed by European Commission against Racism and Intolerance (ECRI) General Policy Recommendation no. 7 but the casework of the *Consiliul National pentru Combaterea Discriminarii* [National Council on Combating Discrimination (NCCD)] has gradually incorporated most relevant legal concepts suggested by this document into the interpretation of the law.¹⁸

A.1.1. Areas covered by anti-discrimination legislation

[21]. Romanian anti-discrimination legislation encompasses the areas protected by the Employment Directive and the Race Directive: employment and labour-related issues, access to services, access to health, education etc., and goes beyond these standards by introducing the concept of protection of the right to dignity. The principle of equality and prohibition of discrimination applies in relation to all 'human rights and fundamental freedoms or rights recognised by Romanian legislation, in the political, economic, social and cultural field or in any other domains of public life.'¹⁹

13 G.O. 137/2000 with the subsequent modifications, Article 2 (4), reads: 'Any distinction, exclusion, restriction or preference based on two or more of the criteria foreseen at para. 1 shall constitute an aggravating circumstance in establishing the contraventional responsibility if one or more of its components is not subject to criminal law.'

14 The law explicitly allows affirmative actions or special measures to be instituted in favour of persons or groups of persons belonging to vulnerable or disadvantaged groups, with the purpose of ensuring they enjoy equal opportunities.

15 Art. 2.11. Romania/ Law 27/2004 concerning the adoption of the Government Ordinance 77/2003 for the amendment of the Government Ordinance 137/2000 regarding the prevention and the punishment of all forms of discrimination (11.04.2004): 'Any behaviour on grounds of race, nationality, ethnic origin, language, religion, social status, beliefs, sex, sexual orientation, belonging to a disadvantaged group, age, disability, refugee or asylum seeker status or any other criterion, which leads to establishing an intimidating, hostile, degrading or offensive environment.'

16 Art. 5. Romania/ Law 27/2004 concerning the adoption of the Government Ordinance 77/2003 for the amendment of the Government Ordinance 137/2000 regarding the prevention and the punishment of all forms of discrimination (11.04.2004): any adverse treatment triggered by a complaint to the NCCD or by a case lodged with the courts of law regarding the infringement of the principle of equal treatment and non-discrimination.

17 Art. 2.11. Romania/ Law 27/2004 concerning the adoption of the Government Ordinance 77/2003 for the amendment of the Government Ordinance 137/2000 regarding the prevention and the punishment of all forms of discrimination (11.04.2004).

18 Para. 6 of the ECRI General Policy Recommendation no. 7 reads as follows: 'The law should provide that the following acts, inter alia, are considered as forms of discrimination: segregation; discrimination by association; announced intention to discriminate; instructing another to discriminate; inciting another to discriminate; aiding another to discriminate.'

19 Article 3 of the Ordinance 137 and Art. 1.(2) of Romania/ Law 48/2002 concerning the adoption of the Government Ordinance 137/2000 regarding the prevention and the punishment of all forms of discrimination (31.01.2002).

A.2. NCCD work on discrimination on the grounds of sexual orientation

[22]. Though Art. 23 of Ordinance 137 from August 2000 provided that a national equality body would be established within 60 days of the law being published, it took more than a year for the government to issue a decision establishing the NCCD.²⁰ Despite a rather slow start in its first years of functioning, the NCCD gradually became a proactive actor, engaging in a multitude of projects and establishing itself as a serious voice in combating discrimination.

A.2.1. Profile of the national equality body

[23]. In September 2006, the NCCD became an autonomous public authority under the control of the Parliament. This change was intended to ensure the independence of the NCCD.

[24]. As part of its mandate, the NCCD is requested to propose draft laws in the field of combating discrimination and to initiate acts to ensure the harmonisation of other legal provisions with the equality and non-discrimination principle.²¹

[25]. The powers of the NCCD include preventing discrimination via awareness raising and education campaigns, mediating between the parties, providing support for the victims of discrimination, investigating and sanctioning discrimination, including *ex officio*, as well as initiating drafts to ensure harmonisation of legal provisions with the equality principle.²²

[26]. As of February 2008, the NCCD still has no internal procedure for addressing the cases of discrimination it receives. This makes its decisions vulnerable when judicial control is involved. An informal draft was circulated for discussion after a coalition of non-governmental organisations representing vulnerable groups and human rights organisations submitted a memo to the NCCD.²³

A.2.2. Venues available for anti-discrimination complaints

20 Romania/ Government Decision 1194 from 2001 establishing the National Council on Combating Discrimination (12.12.2001).

21 See Article 19^a of the Romania/ Government Ordinance 137/2000 regarding the prevention and the punishment of all forms of discrimination, amended (20.07.2006); see also Article 2 para. (1) point (b), (c), (d) of the Romania/ Government Decision 1194/2001 regarding the organisation and functioning of the National Council for Combating Discrimination, amended (17.11.2003).

22 The NCCD is still working on developing a mechanism for tracking complaints and drafting statistics based on relevant indicators. So far the effort of collecting data was undertaken in an empirical manner based on ad hoc requests.

23 Letter from 16 NGOs, 28.11.2007, on file with national FRALEX expert.

[27]. The 2006 amendments of the anti-discrimination legislation, adopted under the impact both of the two EU directives and of the ratification of Protocol no.12 of the European Convention on Human Rights (ECHR),²⁴ underlined the optional character of the administrative procedure for sanctioning discrimination before the NCCD.²⁵ The victim of discrimination can choose between filing a complaint with the NCCD, which will result in an administrative sanction, and/or filing a civil complaint for damages with the court of law, with the advantage of being exempt from paying judicial taxes. These venues are not mutually exclusive and the plaintiff can choose to use them simultaneously, which in practice creates problems for all the parties involved. Courts decide independently, but, if the NCCD has issued a decision prior to the civil case, the NCCD decision has the benefit of a strong presumption of legality and it can be used before the civil court in proving discrimination, liability and the existence of damages. This presumption in favour of the NCCD decision is not, however, absolute and the defendant can challenge the legality of the decision by the NCCD and submit evidence which would lead the civil court to pass over the NCCD decision.

A.2.2.1. Administration of anti-discrimination complaints

[28]. Any individual or any legal entity with an interest can file a complaint with the NCCD within one year of the event. The NCCD can also start the case *ex officio*.²⁶ The NCCD has 90 days to investigate the case, organise hearings and decide whether anti-discrimination provisions were breached or not.

[29]. The NCCD rules on the existence of a discriminatory act and issue an administrative sanction while compensation claims for discrimination can be decided only in the civil court. The NCCD rulings and sanctions can be appealed before the administrative courts.

[30]. In accordance with the directives, the anti-discrimination legislation introduces the concept of 'sharing the burden of proof.' Instead of shifting the burden of proof onto the defendant,²⁷ Romanian law provides that 'the interested party

24 Protocol no.12 of the European Convention on Human Rights (ECHR) was ratified by Romania in 2006.

25 See Article 21 of Romania/ Government Ordinance 137/2000 regarding the prevention and the punishment of all forms of discrimination, amended (20.07.2006).

26 Art.19.(2), Romania/ Government Ordinance 137/2000 regarding the prevention and the punishment of all forms of discrimination, republished in February 2007.

27 Article 8 of the Council Directive 2000/43/EC of 29 June 2000 implementing the Principle of Equal Treatment between Persons irrespective of Racial or Ethnic Origin reads: 'Member States shall take such measures as are necessary, in accordance with their national judicial systems, to ensure that, when persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment.' See also, ECRI General Policy Recommendation no. 7, para. 11, which states: 'The law should provide that, if persons who consider themselves wronged because of a discriminatory act establish before a court or any other competent authority facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no discrimination.'

has the obligation to prove the existence of facts which allow the existence of direct or indirect discrimination to be presumed, and the party against whom a complaint was filed has the duty to prove that the facts do not amount to discrimination.²⁸

- [31]. The 2006 amendment of the law allowed as means of proof for acts of discrimination any type of evidence, including audio and video recordings, as well as statistical data.²⁹

A.2.3. Remedies and sanctions applied under the anti-discrimination legislation

A.2.3.1. Remedies and sanctions applied by the NCCD

- [32]. The NCCD can issue administrative sanctions: administrative warnings and fines.³⁰ The NCCD has informally developed a practice of adopting recommendations carrying no financial damages when the perpetrators are central governmental agencies or public actors (e.g. discrimination is triggered by a minister's orders or the internal regulations of central public administration).³¹

A.2.3.2. Remedies and sanctions applied by the civil courts

- [33]. According to Article 21 of Government Ordinance 137/2000, the person who considers him or herself discriminated against has three years to file a complaint for civil damages, requesting moral and pecuniary damages, or re-establishing *status quo antes* or, nullifying the situation established as a result of the discrimination, according to civil law.³²
- [34]. The courts of law can also decide that the public authorities will withdraw or suspend the authorisation of legal persons who caused significant damage as a

28 Art.20.(6), Art.27.(4), Romania/ Government Ordinance 137/2000 regarding the prevention and the punishment of all forms of discrimination, republished in February 2007.

29 See Article 19-5 para. (6) and Article 21 para.4 of the Romania/ Government Ordinance 137/2000 regarding the prevention and the punishment of all forms of discrimination, amended (20.07.2006).

30 The amount of the fines differs: when the victim is only one individual, the amount varies from 400 RON to 4,000 RON (114-1,114 Euro) when the victims are a group or a community (e.g.: ethnic minority or the LGBT community as a group), the fine ranges between 600 and 8,000 RON (170-2,285 Euro).

31 See NCCD Decision 260, ACCEPT v. the Ministry of Health from 29.08.2007 (in annex 7).

32 Art. 21, Romania/ Law 324/2006 for the amendment of the Government Ordinance 137/2000 regarding the prevention and the punishment of all forms of discrimination, (20.07.2006).

result of discriminatory action or who repeatedly infringed the provisions of the anti-discrimination legislation.³³

A.2.4. Gradual increase of visibility of the NCCD

- [35]. Though recent reports note a lack of awareness regarding the existence and the enforcement of anti-discrimination legislation in general,³⁴ a series of high profile cases in 2006-2007, as well as a sustained effort of enhanced public presence have led to a gradual increase in the public visibility of the NCCD.³⁵
- [36]. The NCCD, both in its Plan of Action³⁶ and in its 2007 National Strategy, included relevant data on discrimination on the grounds of sexual orientation.³⁷
- [37]. Since its establishment, the NCCD has received 34 complaints of discrimination on the grounds of sexual orientation, has started one case *ex officio*, following media reporting and has issued decisions in 31 of them. Of this total, the NCCD found and sanctioned discrimination in six different cases. None of the decisions of the NCCD on the grounds of sexual orientation has been appealed before the administrative courts.³⁸

A.2.4.1. Employment-related cases

- [38]. The NCCD has decided in cases where the victims of discrimination were harassed and penalised in their work context following the disclosure of their sexual orientation or following allegations about their presumed homosexuality.³⁹
- [39]. The Council also supported the lobbying efforts of ACCEPT in 2003 when a Joint Order issued by the Ministry of Education and the Ministry of Health required the psychological evaluation of teachers and stated that homosexuality

33 Art. 21.5, Romania/ Law 324/2006 for the amendment of the Government Ordinance 137/2000 regarding the prevention and the punishment of all forms of discrimination, (20.07.2006).

34 Romania/ANES/ *Studiu Privind Discriminarea Multipla pe Piata Muncii* [press release on Study on Multiple Discrimination of the Labour Market], available at <http://www.anes.ro/> (19.01.2008).

35 Romania/ National Council for Combating Discrimination, Perceptions and Attitudes towards Discrimination, available at: <http://www.cncd.org.ro/studiiianalize.swf>. (20.01.2008). See also Romania/ National Council for Combating Discrimination, *Directia Relatii Internationale, Integrare Europeana, Politici Afirmative, Studii si Monitorizare*, [Department for International Relations, European Integration, Affirmative Policies, Studies and Monitoring], *Analiza de imagine a Consiliului Național pentru Combaterea Discriminării pentru primul semestru al lui 2006*, available at: <http://www.cncd.org.ro/studiiianalize.swf>.

36 Romania/Government Decision 1258 on adopting the National Action Plan to Combat Discrimination (13.08.2004).

37 Romania/Consiliul Național pentru Combaterea Discriminării, *Strategia națională de implementare a măsurilor de prevenire și combatere a discriminării (2007-2013)* on file with national FRALEX expert.

38 Response of the NCCD to FRALEX request from 31.01.2008, on file with national FRALEX expert.

39 Romania/CNCD/ACCEPT on behalf of B. R. v. AV, MI and Regia Autonoma Decision 29 of the NCCD, (07.09.2007). See also Romania/CNCD/ ACCEPT and CRL on behalf of PMG v. IS, Decision 16(18.01.2005).

was incompatible with teaching. The regulation was repealed in 2003, but in 2006, discrimination on the basis of sexual orientation and gender identity was again included in a joint order by the two institutions, which once again mentioned homosexuality on the lists of conditions triggering the prohibition to work as teacher.⁴⁰ Following public positions by the NCCD, the two ministries agreed to clarify the meaning of the regulation to eliminate discrimination and created a working group which, however, had not convened by February 2008.⁴¹

A.2.4.2. Access to services

- [40]. The most famous court decision in relation to discrimination based on sexual orientation was decided in 2007 by a court of first instance in a civil suit for damages against a gas company, *Distrigaz Sud*.⁴² The plaintiff who was subjected to degrading language and behaviour when he went to pay the gas bill for an NGO working on sexual minorities, ACCEPT, was awarded 1,000 Euro in civil damages. An appeal is currently pending.
- [41]. In its first major decision on sexual orientation, the NCCD found against the Romanian airline, TAROM, for denying same-sex couples access to its transport services caused by the explicit exclusion of same-sex couples from the promotion for Valentine's Day specials for couples (opposite-sex couples were allowed to participate in the promotion without any restrictions).⁴³

A.2.4.3. Access to health services

- [42]. Access to health services was discussed in two cases, in the context of restrictions applied to homosexual men in relation to donating blood. The legitimate interest in public health and blood safety was balanced by the NCCD against the measures proposed by the Ministry of Health (permanent exclusion of gay men from donating blood) which were considered both inadequate and unnecessary.⁴⁴

40 Romania/Ministry of Education and Research, Ministry of Health and the National Health Insurance Authority, Order No. 4840/IR 38342/2796/2005 on mandatory health check of school personnel.

41 ACCEPT, IGLHRC, ILGA Europe, joint submission to the United Nations Human Rights Council, under the Universal Periodic Review, available at www.iglhrc.org (08.02.2008).

42 Romania/ Judecatoria sectorului 4 Bucuresti/ D.Z. v. Distrigaz Sud, Decision 4222 in File no.710/4/2006 (01.08.2007).

43 Romania/CNCD/ Tarom Decision, decision 39 (01.03.2005).

44 Romania/CNCD/ ACCEPT v. the Ministry of Health for the National Institute of Haematology, Decision 337, (21.11.2005) and Romania/CNCD/ ACCEPT v. the Ministry of Health, Decision 260, (29.08.2007).

A.2.4.4. Right to dignity

- [43]. The NCCD invoked the provisions on the right to dignity⁴⁵ in almost all its decisions on the grounds of sexual orientation, either in conjunction with other provisions specifically prohibiting discrimination in various areas, or on its own, particularly in cases of messages using offensive or insulting language, or creating an intimidating and hostile environment in relation to the victim or the LGBT community as a group.⁴⁶

A.3. Work of other national bodies

- [44]. The Annual Report of *Avocatul Poporului* [the Romanian Ombudsman] does not explicitly mention sexual orientation, although it does mention cases of discrimination on other grounds.⁴⁷ Upon being requested for more information on this issue, the Ombudsman reported receiving no complaints on the grounds of sexual orientation between 2000 and 2007 and initiating one case *ex officio* – the case was closed for lack of competence.⁴⁸

A.4. Work of NGOs

- [45]. Romanian anti-discrimination law creates legal standing for NGOs with an interest in combating discrimination.⁴⁹
- [46]. The vast number of anti-discrimination complaints filed with the NCCD originated from human rights associations working for the protection of sexual

45 Art. 19 of Romania/ Government Ordinance 137/2000 regarding the prevention and the punishment of all forms of discrimination (31.08.2000);

46 Romania/CNCD/ Asociatia Attitude v. Gazeta de Cluj, Decision No. 207 (14.07.2003). See also Romania/CNCD/ SA v. Ziarul Atac, Decision 231 (29.08.2005).

47 Romania/ *Avocatul Poporului* [the Romanian Ombudsman], *Raport anual 2006*, available at: <http://www.avp.ro/> (12.11.2007). The Ombudsman reports that the institution received 78 complaints from persons who considered themselves to have been discriminated against (no grounds are individualised) out of the 6,407 petitions received in 2006.

48 An article was published by *Adevarul* on 18.01.2001 and was entitled: 'The Investigation by the Police of a Young Gay Leading to a Strasbourg Case'. As the article mentioned interrogations on the sexual preferences of the plaintiff and offensive treatment by the police, the representatives of the Ombudsman wrote to the police office. When the plaintiff filed a criminal complaint against the police officers for the criminal offence of *abuse in service with the limitation of certain rights*, the Ombudsman ceased to monitor the case. Response of the Romanian *Avocatul Poporului* [Ombudsman] to FRALEX national expert request for information 15.01.2008, on file with FRALEX national expert.

49 Art. 22.1, Romania/ Law 324/2006 for the amendment of the Government Ordinance 137/2000 regarding the prevention and the punishment of all forms of discrimination, (20.07.2006): (1) Human rights non-governmental organisations can appear in court as parties in cases involving discrimination pertaining to their field of activity and which prejudice a community or a group of persons. (2) The organisations provided in the above paragraph can also appear in court as parties in cases involving discrimination which prejudices a natural entity, if the latter delegates the organisation to that effect.

minorities (ACCEPT Romania⁵⁰ (approx. 20 complaints) and Attitude Cluj)⁵¹ and from the Centre for Legal Resources.⁵²

- [47]. In particular, ACCEPT and the Centre for Legal Resources were actively involved in supporting the amendments to the anti-discrimination legislation and in strengthening the capacity of the NCCD.⁵³
- [48]. ACCEPT is a member of an informal coalition of human rights NGOs representing various groups who are potential victims of discrimination. Together they coordinate their efforts for more effective advocacy.⁵⁴

50 See www.accept-romania.ro (04.02.2008).

51 See www.attitude.ro (04.02.2008)

52 See www.erj.ro (13.02.2008).

53 See http://accept-romania.ro/index.php?option=com_content&task=view&id=37&Itemid=55 (10.02.2008).

54 See www.antidiscriminare.ro (20.02.2008).

B. Freedom of movement

- [49]. *Oficiul Roman pentru Imigrari* [Romanian Office for Immigration (ROI)] reports transposition of Directive 2004/38/EC in the Ordinance 30/2006 on the free movement of citizens of the EU and of the EEA.⁵⁵
- [50]. A partner is ‘a person who lives together with a citizen of the EU, if the partnership is registered according to the law of the Member State of origin or, when the partnership is not registered, the relationship can be proved.’⁵⁶ The legal definition does not distinguish between de facto partners or registered partnerships, between same-sex or heterosexual partnerships, but it leaves it to the national legislation in the country of origin to establish the validity of the partnership.
- [51]. The validity of same-sex partnerships or marriages is regulated by the legislation in the country where the marriage or the partnership was registered, as established by the legislation on private international law regulations, Law 105/1992.⁵⁷ Law 105/1992 provides in Article 11 that ‘the status, the capacity and the family relations of the individual are ruled by his or her national law, with the exception of cases when there are special norms prescribing differently.’ The law does not specifically mention registered partnerships or same-sex marriages, but it can be argued that the legal provision applies *mutatis mutandis*. There are no court cases reported on this issue.
- [52]. The ROI did not register any requests for admission or registration from LGBT partners of EU citizens.⁵⁸ The ROI also specified that the institution does not collect data on the sexual orientation of its beneficiaries according to Article 7. (1) of the Law on the Protection of Private Data.

B.1. EU citizens who are LGBT partners of EU citizens

- [53]. LGBT partners of EU citizens who are also EU citizens have the right to move and reside freely on Romanian territory on the basis of Article 3 of the Governmental Ordinance 102/2005 further amended by Ordinance 30/2006 or,

55 Romania/Governmental Ordinance 102/2005 on the freedom of movement and of residence of EU citizens (14.07.2005) was approved and amended by Romania/Law 500/2006 on amending and approving Ordinance 30/2006 (28.12.2006).

56 Art. 2.(1)7 of Romania/Law 500/2006 on amending and approving Ordinance 30/2006 (28.12.2006).

57 Romania/Law 105/1992 on private international law regulations (22.09.1992).

58 Response 2150194 of the Romanian Office for Immigration, 25.01.2008, on file with national FRALEX expert.

as partners, according to Article 2.(1)7 of Law 500/2006 which introduces the concept of partnership into Romanian legislation.⁵⁹

B.2. Third country national LGBT partners of EU citizens

- [54]. Third country nationals who are partners of EU citizens can freely move and reside in Romania together with their partners only if the partnership is registered according to the law of their Member State of origin or, in cases where the partnership is not registered, if the relationship can be proved.⁶⁰
- [55]. See supra for provisions of Article 11 of Law 105/1992.

B.3. Third country national LGBT partners of Romanian citizens

- [56]. Unlike third country national partners of EU citizens, the partners of Romanian citizens who are not citizens of an EU Member State can request visas only if the couple has at least one child in common.⁶¹ In this way, Romanian citizens are treated less favourably than EU citizens residing in Romania as regards the possibility of being joined by non-married partners.
- [57]. The law does not distinguish between registered and unregistered partnership but the partners must have at least one child together, which implies that childless, same-sex as well as childless, heterosexual partners are excluded.
- [58]. Law 56/2007 on the Status of Aliens provides that the visa request for family reunification must be accompanied by evidence of the marriage, kinship or partnership, without detailing what types of evidence can be submitted in the case of a partnership.⁶²
- [59]. Article 46(15)c of Law 56/2007 grants the same right to family reunification to ‘children of a Romanian citizen, of the husband or of the wife or of the partner, including adopted children under 21 who are in the care of the Romanian citizen, of the husband or of the wife or of the partner’.

59 Art.3 of Romania/Governmental Ordinance 102/2005 on the freedom of movement and of residence of EU citizens (14.07.2005).

60 Romania/Law 500/2006 on amending and approving Ordinance 30/2006 (28.12.2006).

61 Art.46.15.b of Romania/Emergency Ordinance 194 on the status of aliens amended by Romania/Law 56/2007 for amending and approving E.O.194/2002 (13.03.2007).

62 Art.46.16 of Romania/Emergency Ordinance 194 on the status of aliens amended by Romania/Law 56/2007 for amending and approving E.O.194/2002 (13.03.2007).

C. Asylum and subsidiary protection

[60]. The Romanian legal system recognises sexual orientation, as defining membership of a particular social group, as a ground for persecution for the purpose of seeking refugee status.

C.1. Sexual orientation as common characteristic for membership of a particular social group

[61]. Romanian legislation transposed the provisions of Article 10(1) of Directive 83/2004 (Qualification Directive), including the definition of persecution of a social group, when sexual orientation is the common characteristic of the group, in Article 10 d) (iii) of Governmental Decision 1251/2006 approving the methodological norms for Law 122/2006 on Asylum.⁶³

[62]. The text of Governmental Decision 1251 from 2006 provides that, ‘when establishing the reasons for the persecution, it should be taken into consideration if (...) d) the applicant belongs to a social group meaning (...) (iii) depending on the circumstances in the country of origin, a certain social group can include a group based on the common denominator of sexual orientation. Sexual orientation cannot trigger the existence of a social group under the definition of the current provision when the activities specific to sexual orientation are criminal and penalised by Romanian legislation. Gender elements can be included in the understanding of sexual orientation, under the requirement that they are the only reason for enforcing this article.’⁶⁴

[63]. The ROI mentioned that there were no cases registered by their offices of sexual orientation being invoked as a justification for persecution.⁶⁵

[64]. Lacking relevant jurisprudence, one can only speculate on how the ROI will interpret the provisions. Given the procedures in other cases when asylum seekers invoked persecution ‘for reasons of membership of a particular group’, we can only extrapolate and expect that the country of origin information will be essential in determining the existence of the risk of persecution and that the applicants will have to provide evidence of how the risk of persecution applies in their personal cases.

63 Romania/ Law 122/2006 on Asylum in Romania (18.05.2006).

64 Art. 10 d) (iii) of Romania/ Governmental Decision 1251/2006 approving the methodological norms for Law 122/2006 on Asylum.

65 Response 2150194 of the Romanian Office for Immigration, 25.01.2008, on file with national FRALEX expert.

C.2. Definition of family members in the context of asylum and subsidiary protection

- [65]. Article 2(h) of the Qualification Directive was transposed into Romanian legislation in Article 2.j of Law 122/2006 on Asylum⁶⁶ which defines family members as: ‘the following members of the family of the beneficiary of refugee status or of subsidiary protection status, as long as, at the date when the application was lodged by the main applicant, the family existed in the country of origin: (i) the husband or the wife of the beneficiary of refugee status or of subsidiary protection status, (ii) minor children of the beneficiary of refugee status or of subsidiary protection status, who are under the responsibility of the beneficiary, under the requirement that they are not married, no matter if they were born within wedlock, outside wedlock or if they were adopted according to national legislation.’⁶⁷
- [66]. The ROI concluded that Romanian legislation does not include under the definition of family persons living in a stable relationship without being married (same-sex partners of the beneficiaries of refugee status or of subsidiary protection status) because Romanian legislation does not provide for a legal framework for civil unions/unregistered partnerships (*concupinaj*).

66 Romania/ Law 122/2006 on Asylum in Romania (18.05.2006).

67 Art. 2.j, Romania/ Law 122/2006 on Asylum in Romania (18.05.2006).

D. Family reunification

- [67]. Article 4(3) of Council Directive 2003/86/EC on the right to family reunification was transposed into Romanian legislation in the Emergency Ordinance 194 of 2002 on the status of aliens in Romania.⁶⁸ Article 46.1. states that ‘foreigners legally residing in Romania, excepting those with educational visas, can request family reunification for their spouses and children.’ Article 46(5) states that ‘foreigners who were granted refugee status or subsidiary protection can request family reunification for the husband/wife only if the date of the marriage predates the date when any of these forms of protection were established’.
- [68]. The authority in charge with issuing visas, ROI reported as of January 2008, not receiving any application for family reunification based on same-sex marriages.⁶⁹

68 Romania/Emergency Ordinance 194 on the status of aliens amended by Romania/Law 56/2007 for amending and approving E.O.194/2002 (13.03.2007).

69 Response 2150194 of the Romanian Office for Immigration, 25.01.2008, on file with national FRALEX expert.

E. Freedom of assembly

E.1. Implementation in the legal system

[69]. Article 39 of the Romanian Constitution guarantees freedom of any peaceful assembly.⁷⁰ This right is thoroughly described in the legislation⁷¹ and establishes the general principle that any peaceful assembly can take place freely, without limitation.⁷² Exceptions are set for reasons of public safety.⁷³

[70]. All assemblies taking place on a public road, in public market squares or in other places outdoors, need to be notified to the mayor's office. The request, '*declarație prealabilă*' [preliminary declaration], must be filed at least three days in advance. A commission formed from the local administration and police officials is convened by the mayor and gives its opinion on the request. The mayor takes the final decision.

E.2. Cases of refusals or bans

[71]. The first initiative to organise an LGBT-related march in Romania dates from 2005.⁷⁴ The process of authorising the gay march was prolonged, exceeding the 48-hour time interval established by the law⁷⁵ due to hot public debates.⁷⁶ The first response from Bucharest's Mayor, Adriean Videanu, was negative. The official justification was that the local authorities were not able to ensure the

70 Article 39 of the Romanian Constitution: 'Freedom of assembly: any meeting, demonstration or procession or any other gathering shall be free and may be organised and take place only peacefully, without arms of any kind'.

71 Romania/*Legea 60/1991 privind organizarea și desfășurarea adunărilor pașnice* [Law 60//1991 regarding the organisation and execution of peaceful meetings], (23.09.1991) republished in Romania/*Monitorul Oficial* no.888 of 29.09.2004.

72 Article 1 and 2 of Romania/Law 60//1991 regarding the organisation and execution of peaceful meetings (23.09.1991).

73 For example, it is forbidden to organise two or more separate public events in the same place or on the same itinerary; demonstrations might be forbidden because they are against democratic values, the law prohibiting demonstrations promoting fascist, communist, racist or chauvinistic ideas, demonstrations that incite to discrimination, to public violence, to obscene manifestations or which are against moral values) Art. 9, Romania/Law 60//1991 regarding the organisation and execution of peaceful meetings (23.09.1991).

74 The initiative belongs to ACCEPT Association: <http://www.accept-romania.ro>. The event took the form of a march for equal rights and not of a gay pride, as did the marches in 2006 and 2007.

75 L.V.S (2005) 'Homosexualii romani, decisi sa iasa in strada' [Romanian homosexuals determined to take to the streets] in: *Gandul*, (23.05.2005).

76 During this time, a fervent public debate took place in the media. The opponents of the march differed: orthodox priests, public persons. The mayor's office reported having received almost 600 protest letters against the march collected by an orthodox priest. See V. Zamfir (2005) 'Fotbalul incurca marsul homosexualilor' [Football creates problems for the homosexuals' March] in: *Evenimentul Zilei*, (25.05. 2005).

safety of the march participants.⁷⁷ This justification did not fall under any of the legal exceptions prescribed by the law.⁷⁸

[72]. Some public officials' reactions criticising this decision came promptly.⁷⁹ Apart from these reactions, no political party or public person came publicly to support the march. In the end, because of the political pressure and international lobbying, Mayor Videanu issued the authorisation and allowed the gay march to take place.⁸⁰

[73]. Mayor Videanu authorised two other gay marches in 2006 and 2007. However, in 2006 the mayoralty had objections to the itinerary, which had to be changed.⁸¹ The argument of the commission convened by the Mayor was that the proposed itinerary passed by the Ministry of Internal Affairs, a strategic site.⁸² However, the headquarters of an administrative institution is not a site included in the limited list of exceptions.⁸³ Furthermore, according to Article 15(a) of the same law, the mayor's office must establish a list of all these sites, yet no list was invoked in the refusal from the local authorities.

[74]. Every year along with the gay march a so-called Normality March was allowed to take place. This is an initiative of the Conservative Party,⁸⁴ in cooperation with the Romanian Orthodox Church and extreme right-wing groups, including the organisation *Noua Dreapta* [New Right].⁸⁵ In 2005, they were issued authorisation in due time, without any delays or discussions. The participants displayed fascist symbols and the portrait of Corneliu Zelea Codreanu, and they

77 G. Baci (2005) 'Primaria capitalei nu a gasit jandarmi pentru homosexuali' ['Bucharest Mayor's Office did not find gendarmes for homosexuals'] in: *Adevarul*, (24.05.2005); see also V. Zamfir (2005) 'Primaria interzice defilarea homosexualilor prin centru' ['The Mayor's Office interdicts homosexuals marching downtown'] in: *Evenimentul Zilei*, (23.05.2005).

78 See the information in Section E.1 – Implementation in the legal system.

79 The Ministry of Justice, Monica Macovei, and the President of Romania, Traian Basescu, harshly condemned Videanu's decision stating that the decriminalisation of homosexual relations took place years ago. O. Stancu (2005) 'Basescu si GayFest: 'Fiecare o face cum ii place' ['Basescu and GayFest: Everyone is free to do it how he/she likes'] in: *Jurnalul National*, (26.05.2005). See also Chapter I.

80 V. Zamfir (2005) 'Homosexualii vor defila prin centrul capitalei' ['Homosexuals will march in the centre of Bucharest'] in: *Evenimentul zilei*, (27.05.2005).

81 This information was provided by Mr. Florin Buhuceanu, ACCEPT Director during the gay march in 2006, interviewed on 20.01.2008.

82 Article 8 paragraph 2 of the Romania/*Legea 60/1991 privind organizarea și desfășurarea adunărilor pașnice* [Law 60/1991 regarding the organisation and execution of peaceful meetings], (23.09.1991) republished in Romania/*Monitorul Oficial* no.888 of 29.09.2004 states that the local authorities' commission that is giving the advice during the authorisation procedure may make justified modifications in the organizers' authorisation with their permission. See the discussion on this Article in Section E3 – Legislative limitations and need for amendments.

83 Article 5 of Romania/*Legea 60/1991 privind organizarea și desfășurarea adunărilor pașnice* [Law 60/1991 regarding the organisation and execution of peaceful meetings], (23.09.1991) republished in Romania/*Monitorul Oficial* no.888 of 29.09.2004, contains a list of sites that qualify for the prohibition of public assemblies in their vicinity, e.g. railway stations, airports, hospitals, military objectives etc.

84 L. Ciobanu (2005) 'Voiculescu isi scoate PC-ul in strada' ['Voiculescu is taking his CP members out on to the street'] in: *Cotidianul*, (26.05.2005).

85 *Noua Dreapta* [New Right] is a non-governmental organisation registered in Romania. It acknowledges its descent from the interwar fascist movement of Legionari, whose head was Corneliu Zelea Codreanu – executed by the Romanian authorities during the operation to eliminate reactionary, undemocratic movements. See more information on the organisation's website <http://www.nouadreapta.ro>. This organisation was sanctioned in 2006 by the NCCD for racist articles published on their website comparing the so-called 'Roma problem' to the 'Jewish problem' Romania had during the interwar period and inciting discrimination and violence against the Roma community. Yet the Prosecutor's Office did not find grounds for prosecuting the organisation or the authors according to criminal legislation in this field.

used slogans inciting discrimination and violence against LGBT people. This is particularly worrying since in Romania there is a special law prohibiting such organisations and their activity, which was not enforced by the authorities in any of these cases.⁸⁶

[75]. Apart from these authorised marches, New Right also organised illegal homophobic manifestations in parallel with the gay march (organised ad hoc, at the same time and in the same place as the gay march).⁸⁷ In 2005, Tudor Ionescu, the organisation's leader was fined by the police.⁸⁸

E.3. Legislative limitations and the need for amendments

[76]. No gay march was actually forbidden from taking place, only the 2005 gay march was initially refused authorisation and subsequently authorised by the Mayor of Bucharest. None of the justifications the Mayor presented for this decision were covered by the express legal exceptions to freedom of assembly listed by Romanian legislation.

[77]. Taking into consideration all the debate around the gay parades in Romania since 2005, there are two main provisions in Law 60/1991 which need amendment.

[78]. The first provision refers to Article 9(a), final thesis, and Art.9(c) of the law.⁸⁹ The provision lacks clarity and specificity for a limitation to a fundamental right. This may lead to misinterpretations of the law infringing the exercise of freedom of assembly in the case of gay marches, in a society where homosexuality is considered to go against public morals and homosexual relations displayed in public are considered obscene.

[79]. The Romanian Senate recently rejected a proposal⁹⁰ to amend Law 60/1991 aiming to forbid assemblies promoting 'the ideas and manifestations of

86 Romania/ Ordonanta de Urgenta a Guvernului 31/2002 prohibiting organisations and fascist, racist and xenophobic symbols and the promotion of the veneration of persons guilty of crimes against peace and humanity. See information in Section E4 – Duties of protection by the state.

87 Article 5 (2) of the Romania/*Legea 60/1991 privind organizarea și desfășurarea adunărilor pașnice* [Law 60/1991 regarding the organisation and execution of peaceful meetings], (23.09.1991) republished in Romania/*Monitorul Oficial* no.888 of 29.09.2004.

88 The amount of the fine was 30,000,000 ROL (around 1,000 Euro). See Andrei Luca Popescu (2005) 'Gay Parade – de la timiditate la caftala' [Gay parade – from timidity to fight] in *Avea*, (30.05 2005).

89 The provision in the list of prohibited events for cases where the assembly aims to promote incitement of obscene manifestations which go against good public morals and cases where the assembly aims to infringe public morals.

90 Romania/ *Lege pentru modificarea Legii 60/1991 privind organizarea și desfășurarea adunărilor pașnice* [Law for the modification of Law 60/1991 regarding the organisation and execution of peaceful meetings], L724/2007, available at: <http://80.97.216.132/senat.proiect.asp?cod=12516&pos=23> (13.02.2008).

homosexuals and lesbians'. The draft is presently under debate in the Chamber of Representatives.

- [80]. Article 8(2) of the law also needs further amendment. This paragraph gives competence to a commission convened by the mayor's office to make any changes in the request for authorisation, with the consent of the applicants. The commission, formed from the local administration, gendarmerie and police officials, has an essential role in the process of authorisation: based on its advice, the mayor issues or refuses to issue an authorisation. As illustrated above, this legal provision may be used in practice to put pressure on the organisers to change an itinerary or other elements of the demonstration. This leads to 'bargaining' with the manifestation of freedom of assembly: the local authorities prefer the new form because the conditions are more convenient and not because the initial elements fell under the legal exceptions; the organisers prefer to obtain authorisation more quickly without complications.

E.4. Duties of protection by the state

- [81]. During all the gay marches in Romania, violent homophobic demonstrations have taken place and the trend is that these opponents become more violent and better organised every year.
- [82]. According to Romanian legislation, the mayor's office, the police and the gendarmes have obligations to protect the participants in demonstrations: to ensure order and physical integrity and to adopt all the necessary administrative measures to that effect.⁹¹ For each of the marches, police mobilisation was to a large extent efficient.⁹²
- [83]. In 2006, the protection of the participants on their way out of the area where the march took place became a problem. Six people were probably followed and were beaten inside the metro, although they were not wearing any distinctive symbols.⁹³ The press reported that the police officials acknowledged that there were more people beaten in the metro, but they did not lodge complaints.⁹⁴
- [84]. The six victims of the aggression in 2006 filed criminal complaints supported by medical certificates and photographs of the perpetrators. An investigation

91 Articles 15-24 of the Romania/*Legea 60/1991 privind organizarea și desfășurarea adunărilor pașnice* [Law 60/1991 regarding the organisation and execution of peaceful meetings], (23.09.1991) republished in Romania/*Monitorul Oficial* no.888 of 29.09.2004.

92 The information was provided by Mr. Florin Buhuceanu, former Director of ACCEPT, interviewed on 20.01.2008.

93 M. Dohi (2006) 'Sase presupusi homosexuali au fost loviti bestial' ['Six alleged homosexuals seriously beaten'] in *Libertatea*, (07.06.2006), available at: <http://www.libertatea.ro/index.php?section=articole&screen=stire&sid=154873>.

94 A. Niculae (2006) '15 ultrași steliști din „Peluza Sud” – agresorii homosexualilor mitingiști' ['15 Steaua hooligans from 'Peluza Sud' – the aggressors of the homosexuals who participated in the gay march'] in *Gandul*, (06.06.2006), available at: http://www.gandul.info/2006-06-06/actual/15_ultrasi.

was opened. After almost two years the police had not yet informed the victims of any resolution.⁹⁵

- [85]. In 2005, the police arrested tens of people from the anti-gay group who behaved violently against the participants.⁹⁶ However, no criminal investigation was carried out and no criminal charges have been brought.⁹⁷
- [86]. In 2006, the gay march was preceded by a joint press conference held by the extreme right-wing organisation New Right and George Becali, the leader of the extreme right party *Noua Generatie* [New Generation] and owner of Steaua Soccer Club, in partnership with the Romanian Orthodox Church, in the Metropolitan seat.⁹⁸ The Conservative Party and the Christian Democratic Peasants' Party also fervently condemned the gay march.⁹⁹ Consequently, the homophobic demonstrations during the 2006 march were the most violent of all three years. Neo-fascist groups and hooligans, so-called *Ultrasii Steaua* (Steaua soccer fans), initiated the violence. Fifty people were arrested. The police identified 15 of them as belonging to the last group.¹⁰⁰
- [87]. In 2007, the gay march was again confronted with violence.¹⁰¹ The police ensured the protection of the participants. Two policemen were harmed by stones thrown in the direction of the march participants. The media reported that five criminal investigations were initiated after the march against anti-gay protesters carrying or using weapons against the participants in the pro-gay march.¹⁰²
- [88]. According to criminal law,¹⁰³ the state has the obligation to protect its citizens against these kinds of organisations and against their actions. Nevertheless, the public prosecutors did not take any measure to open a criminal investigation against any of these groups. Furthermore, although the so-called Normality

95 United States Bureau of Democracy, Human Rights and Labour, Romania. Country Reports on Human Rights Practices. 2006, (06.03.2007).

96 V. Zamfir (2005) 'Atacati cu icoane' ['Attacked with icons'] in *Evenimentul zilei*, (29.05.2005); see also G. Capuerde (2005) 'Homosexuali romani batuti de legionari' ['Romanian homosexuals beaten by the Legionari'] in *Libertatea*, (29.05.2005); see also R. Radu (2005) 'Articolul 200 a marsaluit prin centrul Bucurestiului' ['Article 200 marched along the centre of Bucharest'] in *Cotidianul*, (29.05.2005).

97 V. Zamfir (2005) 'Atacati cu icoane' ['Attacked with icons'] in *Evenimentul zilei*, (29.05.2005).

98 C. Ghinea (2006) 'Preoti, neofascisti si jandarmi la discoteca' ['Priests, neofascists and gendarmes at the disco'] available at http://www.hotnews.ro/articol_49991-Jandarmi-preoti-si-neofascisti-la-discoteca-de-Cristian-Ghinea.htm; see also Razvan Ionescu (2006) 'Legaturi primejdioase' ['Dangerous liaisons'] in *Ziua*, (10.06. 2006), available at: <http://www.ziua.ro/display.php?id=201321&data=2006-06-10&keyword=Legaturi+primejdioase>.

99 Realitatea TV (2006), 'Protest politic – PPCD condamna manifestatia gay' ['Political protest – PPCD condemns the gay manifestation'] 03.06.2006, 09:26.

100 M. Dinescu (2006) 'Cine ne-a pus magiun pe clanta?' ['Who soiled our door?'] in *Gandul*, (09.06.2006), available at: http://www.gandul.info/2006-06-09/actual/cine_a_pus.

101 'Children of God,' in *Nine O'clock*, issue 3953 p. 4 (13.06.2007), available at: http://www.nineoclock.ro/archive_index.php?page=detalii&categorie=frontpage&id=20070613-500941.

102 PROTV News (2007) 'Dosare penale si politisti raniti' ['Criminal investigations and harmed policemen'] 09.06.2007, 19:00, available at: <http://www.protv.ro/stiri/social/dosare-penale-si-politisti-raniti-la-marsul-diversitatii.html>.

103 Romania/ Ordonanta de Urgenta a Guvernului 31/2002 prohibiting organisations and fascist, racist, xenophobic symbols and the promotion of the veneration of persons guilty of crimes against peace and humanity. See information in Section E4 – Duties of protection by the state.

March promotes slogans inciting discrimination and violence against homosexuals, the authorities have not applied the legislation criminalising such acts, instead the organisers received authorisation easily and no fine was given to the participants or organisers of the ad hoc counter-protest in 2006 or 2007.¹⁰⁴

¹⁰⁴ See information in Section E2 – Criminal Law.

F. Criminal law

F.1. Legal provisions on hate speech related to homophobia

- [89]. Since 2000, the Anti-discrimination Law has integrated a provision against incitement to hatred on all grounds of discrimination, against behaviour which takes place in public and harms the dignity of an individual, and against harassment based on any ground of discrimination.¹⁰⁵ The NCCD issued two sanctions against articles published in newspapers¹⁰⁶ which had a discriminatory element based on sexual orientation and three sanctions against discriminatory utterances in the workplace.¹⁰⁷ See the discussion in Section A.2 and cases presented in Annex 1.
- [90]. However, the sanctions issued according to the Anti-discrimination Law have an administrative nature. For criminal penalties, the persons subjected to homophobic speech may invoke the provisions on insult and slander in the Criminal Code, but only to protect their dignity, not to punish ‘hate speech.’ Furthermore, this possibility was interrupted for six months in July 2006, when both insult and slander were decriminalised at the proposal of the government. The governmental proposal adopted by Parliament provided stipulated that only civil remedies were then available to victims of insult and slander.¹⁰⁸
- [91]. The same law of July 2006 amending the Criminal Code created the new crime of ‘hate speech’, as incitement to discrimination based on all grounds of discrimination sanctioned by the Anti-discrimination Law, including sexual orientation.¹⁰⁹ This broadened the scope of application of an earlier provision which only criminalised ‘national and xenophobic propaganda’ and incitement to racist and nationalistic hatred and not mentioning sexual orientation.
- [92]. Taking into consideration both Criminal Code amendments – the decriminalisation of insult and slander and the incrimination of incitement to

105 Article 19 of *Ordonanța privind prevenirea și sancționarea tuturor formelor de discriminare* [Government Ordinance No.137/2000 regarding the prevention and sanctioning of all forms of discrimination] (30.08.2000).

106 Romania/ Hotararea nr. 207/14.07.2003 of the Steering Committee of the National Council for Combating Discrimination, *Asociația Attitude v. Silviu Manastire* (journalist) and *Gazeta de Cluj*, and Romania/ Hotararea nr. 231/29.08.2005 of the Steering Committee of the National Council for Combating Discrimination, *S.A. v. Atac Newspaper*.

107 Romania/ Hotararea nr. 16/18.01.2005 of the Steering Committee of the National Council for Combating Discrimination, *Mr. P.M.G. v. I.S. & Episcopia D*, Romania/ Hotararea nr.29/07.02.2007, of the Steering Committee of the National Council for Combating Discrimination, *B.R. v. A.V., M.I. & Regia Autonoma de Piete, Agreement si Salubritate Oradea*, Romania/ Hotararea nr.102/24.05.2007 of the Steering Committee of the National Council for Combating Discrimination, *Mr. R.G. v. Jandarmeria Buzau*.

108 Romania/Lege 278/2006 on the amendment and completion of the Criminal Code, and on the amendment and completion of other laws (04.07.2006).

109 Article 317 of the Criminal Code.

discrimination – together with the administrative and civil remedies available under the Anti-discrimination Law referred to above, it may be said that protection against homophobic speech was reasonably covered by Romanian legislation.

- [93]. In 2006, the legal provision on the decriminalisation of insult and slander was challenged as unconstitutional before the Constitutional Court. On 18.01.2007 the Constitutional Court decided that the decriminalisation was unconstitutional and infringed the provisions of the Constitution on access to justice (Article 21) and non-discrimination (Article 16).¹¹⁰
- [94]. Other criminal offences in the field of hate speech are sanctioned by the Romania/*Ordonanta de urgenta 31/2002 privind interzicerea organizatiilor si simbolurilor cu caracter fascist, rasist sau xenofob si a promovarii cultului persoanelor vinovate de savarsirea unor infractiuni contra pacii si omenirii* [Law prohibiting fascist, racist and xenophobic organisations and symbols and the encouragement to venerate persons guilty of crimes against peace and humanity].¹¹¹ The text was never used to sanction homophobic groups which acknowledge their lineage to the Fascist movement.¹¹² Furthermore, the repeal of Articles 8 to 11, which defined misdemeanours and provided for the possibility of dissolving legal entities engaged in fascist, racist or xenophobic conduct, leaves the law without legal remedies when confronted with more than mere individual incidents to illegal conduct.

F.2. Legal provisions on hate crimes

- [95]. Prior to 2006, the Criminal Code contained four criminal offences fitting the framework of discrimination-motivated crime.¹¹³ None of them was applicable to homophobically motivated hate crimes. Other provisions such as the aggravating circumstance ('shameful reasons for committing a crime'¹¹⁴) or insult and slander,¹¹⁵ which in theory could have been interpreted to apply to homophobic acts, have never been applied by the judiciary in such cases.
- [96]. In July 2006, the Criminal Code was amended to specifically punish homophobic motivated crimes, as described above.

110 The Constitutional Court found that in cases of defamation it is only by ensuring criminal punishment for these deeds that the state can provide an effective and real protection of human dignity. Consequently, the Court considered that the amendment of the Criminal Code created a legislative vacuum. For more information: Romania/Constitutional Court/Decision No. 62/(18.01.2007).

111 Romania/ Ordinance 31/2002 on the Prohibition of Fascist, Racist and Xenophobic Organisations and Symbols and the Encouragement to Venerate Persons Guilty of Crimes against Peace and Humanity.

112 See information in Section E – Freedom of assembly.

113 Article 247 – Abuse in the exercise of authority against the rights of the person, Article 317 – Nationalistic and chauvinistic propaganda, Article 318.(1) – Impeding the free exercise of religion, Article 319 – Profanation.

114 Article 75 (d) of the Criminal Code.

115 Article 205 and Article 206 of the Criminal Code.

- [97]. Prior to 2006, Article 247 of the Criminal Code, on abuse in the exercise of authority against the rights of the person, did not mention ‘sexual orientation’. In December 2000, the police held illegally and interrogated a young man, A.G., on the basis of his sexual orientation. He was asked for the names of all the gay people he knew. A.G. lodged several criminal complaints with the public prosecutors’ offices, based on Article 247 and Article 250 paragraph (1) of the Criminal Code (Abusive Behaviour). The authorities rejected the complaints and never opened an investigation. The organisation, ACCEPT, reported that the case was sent to the European Court of Human Rights but there has been no follow-up reported in this case.¹¹⁶
- [98]. After the decriminalisation of homosexual consensual relationships between adults (Article 200 of the Criminal Code),¹¹⁷ the police used the provisions of the law on public order to harass homosexuals.¹¹⁸ The police patrolled the public parks and bars known as meeting places of homosexuals.¹¹⁹ Reportedly, police officers framed cases against homosexuals and either punished them with administrative fines or blackmailed them and solicited money or alcohol.¹²⁰ ACCEPT reported a series of such cases in 2002-2003.¹²¹ The victims were represented before the administrative courts and the sanctions were declared void because they were unfounded. As prior to 2006 Article 247 of the Criminal Code did not protect sexual minorities, it could not be used against the police officers harassing gay men. Furthermore, starting a procedure before the NCCD might have been easily dismissed based on the fact that these facts were of a criminal nature.¹²²
- [99]. In April 2006, two NGOs¹²³ in partnership with the NCCD, lobbied the Ministry of Justice to introduce in the amendments of the Criminal Code provisions sanctioning hate crimes, including homophobically motivated crimes:¹²⁴
- The legal aggravating circumstance for any criminal offence conducted with discriminatory motivation on any ground of the Anti-discrimination Law.¹²⁵

116 The information was provided by ACCEPT; see also <http://accept.org.ro/stiri.html#17ian>.

117 On 30.01. 2002, the Law no.61/2002 approving Government Emergency Ordinance no. 89/2001 was published in the Official Gazette of Romania, part I, no. 65/30.01.2002, and came into force.

118 Article 2(1) and Article 2(6) of Romania/ Legea 61/1991 pentru sanctionarea faptelor de incalcare a unor norme de convietuire sociala, a ordinii si linistii publice (18.08.2000) on invoking the offer made in public of sexual services in exchange for money, the prohibition of acts that are obscene, insulting or vulgar, that disturb the public order or disturb persons or affect their dignity.

119 United States Bureau of Democracy, Human Rights and Labour, Romania. Country Reports on Human Rights Practices. 2005, March 2006.

120 The information was provided by Danielle Zavoianu, Coordinator outreach workers, ACCEPT, regarding a case that took place in 2007 in Operei Park, Bucharest, interviewed 02.02.2008.

121 Case of D.A. & B.S from Operei Park (2002), Case of M.S. from Gara de Nord Park (2003). Their summaries are on file with the *Centrul de Resurse Juridice* [Center for Legal Resources].

122 The National Council for Combating Discrimination deals only with cases of discrimination that are of an administrative nature. When receiving cases of a criminal nature, they decline their competence in favour of the public prosecutor’s office.

123 Romania/ ACCEPT Association and Romania/ Centre for Legal Resources.

124 Romania/ Legea 278 / 2006, (4.07.2006).

125 Article 75. (1), point c¹ of Romania/ Criminal Code amended in 2006.

- Expanding the list of grounds protected in the case of two criminal offences already existing in the Criminal Code: abuse in the exercise of power by a civil servant (Article 247) and incitement to hatred (Article 317).¹²⁶

[100]. There is no assessment of the enforcement of this text. In its Shadow Report, the European Network Against Racism (ENAR) notes that, in spite of governmental efforts to introduce anti-discrimination legislation and practices among law enforcement officials and within concerned institutions, training and real implementation is slow.¹²⁷

126 Article 247 and Article 317 of Romania/ Criminal Code amended in 2006.

127 ENAR, 2007 Shadow report: Romania, available at: http://www.enar-eu.org/en/national/romania/Romania_2006.pdf (05.02.2008).

G. Transgender issues

G.1. Transgender status as a ground for discrimination

[101]. See Section A.1., paragraph [17].

G.2. Legislation affecting transgender people

[102]. There is no special legislation regulating the situation of transgender people, not even secondary legislation at the level of authorities with competency in such cases – Ministry of Health, Ministry of Internal Affairs, Ministry of Justice, *Inspectoratul National pentru Evidenta Persoanelor* [the National Inspectorate for the Registration of Persons], *Directia Generala de Pasapoarte* [Passport Department], *Institutul National de Medicina Legala* [the National Institute of Legal Medicine (NILM)].

G.2.1. Norms on identification data

[103]. The law on civil registration data¹²⁸ and the law on the procedures for identification documents¹²⁹ offer indirect guidance on the procedure for sex change and for changes to names and identification data. The legal provisions state that, in order to effect changes in the identification data or in order to undergo sex-change surgery, the plaintiff needs a final judgement which is an intrusion on the right to private life of the person, as explained below.¹³⁰

[104]. In addition, the conditions under which the right to access to a court might be exercised are not clarified in sufficient detail, adding to the uncertainties of the procedures.¹³¹

128 Romania/ Legea 119/1996 cu privire la actele de stare civila [Law regarding civil status documents] (11.11.1996) with the last modifications from 08.09.2006.

129 Romania/ Ordonanta Guvenului 41/2003 privind dobandirea si schimbarea pe cale administrative a numelor persoanelor fizice,(02.02.2003) with the last modifications from 06.07. 2004.

130 Art. 44(i) and Art. 57-58 of the Law 119/1996.

131 The laws do not specify which court is competent to judge the case for changes in identification data, on what legal basis, whether it is a contradictory procedure or a non-contradictory procedure, in the event of it being a contradictory procedure what institution the case should be filed against, if the case is a sensitive case and can be heard in camera, what the judicial tax that needs to be paid is, what the means of evidence necessary in order to get a positive judgement are, where the first instance's judgement is appealed etc. See the case of D in Annex 1.

- [105]. According to Article 44 (i) of the Law 119/1996 on civil status documentation, the information on the new sex can be entered in the civil status documents upon request, once the individual has a final decision from a court. This is an administrative procedure carried out by the civil status bureau within the mayor's office. The regulations implementing the law do not contain any express reference to this situation and do not clarify the procedures.¹³²
- [106]. According to Article 2.(2).1 of the Ordinance 41/2003 on administrative venues for changing names, any transgender person can apply for an administrative procedure to change the individual's surname and the identification documents only after the approval of sex change has been given in a final decision by a court. Additionally, the person must provide a forensic medical act stating his/her sex. The law does not specify whether such an act may be issued by the general practitioner, the doctor who performed the surgery or whether it must be issued by the NILM. In practice, the authorities require a certificate issued by the NILM which implies delays and travelling to Bucharest for those outside the capital. Furthermore, the NILM does not have special expertise in handling such cases.¹³³ The procedure of forensic medical expertise and the whole civil case in court is very intrusive into the individual's private life, instead of being a decision by the individual with the support of medical specialised personnel.
- [107]. The National Inspectorate for the Registration of Persons declared that in the last seven years they had received six requests for surname change due to sex changes. No other information was available.¹³⁴ The NILM did not reply to requests for information.¹³⁵

G.2.2. The sex-change operation and adjacent treatment

- [108]. There is no clear data on whether sex-change surgery and treatment are performed in Romania. Spitalul Clinic de Urgenta Floreasca declared that it is the only clinic in Romania where this type of surgery is performed according to the law.¹³⁶ However, the hospital does not ensure the pre- and post-operation treatment necessary according to the medical protocols and does not have a

132 Romania/ Metodologie 1/1997 pentru aplicarea unitara a dispozitiilor Legii nr. 119/1996 cu privire la actele de stare civila, (13.10.1997).

133 The National Institute of Legal Medicine regularly handles cases to assess the legal capacity of the person or the degree of physical injuries. See information available at: <http://www.legmed.ro/> (02.10.2008). See the Case of D. in Annex 1, when the expertise report recommended a one-year waiting period before allowing the sex-change operation to take place.

134 See Response No.203520/31.01.2008 of the Romania/ Inspectoratul National pentru Evidenta Populatiei, Ministerul Internelor si Reformei Administrative, on file with national FRALEX expert.

135 In an interview with Ms Danielle Zavoianu, a transgender person working with ACCEPT as Project Assistant, she informed us that the NILM also did not reply to their request for information regarding the procedure of forensic medical expertise, interviewed 02.02.2008.

136 See Response No.14/04.02.2008 of Romania/ Spitalul Clinic de Urgenta Floreasca given to ACCEPT, on file with national FRALEX expert.

department of transsexology.¹³⁷ The costs of such intervention and treatment are not covered by public health insurance.

- [109]. The NILM requires that transgender people who want to undergo a sex-change intervention go through multiple psychiatric assessments and treatments as well as hormone treatment.¹³⁸ These decisions are ad hoc, as the Institute lacks a standing committee specialised in transgender-related issues and there is no standardised procedure or medical protocol established on scientific grounds to ensure the predictability and objectiveness of the decision.

137 See Response No.1059/24.01.2008 of Romania/ Spitalul Clinic de Urgenta Floreasca given to a Romanian citizen living in the Netherlands asking about the existence of a transsexology department, on file with national FRALEX expert, courtesy of ACCEPT.

138 Interview with Ms Danielle Zavoianu, Project Assistant, ACCEPT, interviewed 02.02.2008. See also Case D in Annex I.

H. Miscellaneous

H.1. Decriminalisation of consensual homosexual relations

- [110]. The provisions of the Criminal Code banning consensual homosexual relations between consenting adults were repealed in 2002.¹³⁹ The legal changes came as a result of pressure from abroad, including from the United Nations,¹⁴⁰ the Council of Europe,¹⁴¹ and the European Union (on the basis of the Copenhagen political criteria for EU enlargement and through the regular annual reports prior to accession).¹⁴²

H.2. Limitations in gathering statistical data

- [111]. The difficulties in drafting effective legislation and public policies responding to the needs of LGBT people start with the lack of relevant statistical data. Public authorities invoke Article 7 (1) of Law 677/2001 on the protection of persons regarding the use of personal data¹⁴³ prohibiting 'the use of personal data regarding the racial or ethnic origin, political, religious, philosophical or similar opinion, membership of unions, as well as private data regarding health status or sexual life'. The same provision is identified as a deterrent for effective data-gathering and policy-making in the case of women¹⁴⁴ or Roma.¹⁴⁵

139 Romania/ Emergency Ordinance No. 89 (21.06. 2001); adopted by Parliament through Law no. 61 (16.01.2002).

140 Human Rights Committee, (CCPR/C/79/Add. 111, July 28, 1999 para 16).

141 The Parliamentary Assembly of the Council of Europe (PACE), Committee on Legal Affairs and Human Rights, Draft opinion on the application for membership to the Council of Europe submitted by Romania, appendix II, AS/Jur (44)74, Strasbourg, 1993 in which PACE expressed its expectation that Romania would change its law in such way that Article 200 of the Penal Code would no longer consider homosexual acts in private between consenting adults a criminal offence. Similarly, in its Resolution 1123/97 on the honouring of obligations and commitments by Romania, the Parliamentary Assembly noted that 'certain provisions of the Penal Code now in force are unacceptable and seriously imperil the exercise of fundamental freedoms, especially Article 200 on homosexual acts', and expected that within one year Romania would 'amend without delay the provisions of the Penal Code'.

142 Resolution of 19.09.1996, the European Parliament denounced the intention of the Romanian Parliament to increase punishments for consensual same-sex relations between adults. European Parliament - *Résolution sur l'aggravation des sanctions contre les homosexuels en Roumanie*. Similarly, in its *Emergency Resolution on equal rights for gays and lesbians in the EC* of 17.09.1998 the European Parliament demanded the elimination of discrimination and unequal treatment of homosexuals.

143 Romania/law 677 on the protection of persons in relation to the use of personal data (21.11.2001).

144 See, CEDAW/C/ROM/CO/6, Concluding comments of the Committee on the Elimination of Discrimination against Women, Romania, June 2006.

145 DecadeWatch : Roma activists assess the progress of the Decade of Roma Inclusion 2005-2006, available at: <http://www.romadecade.org/index.php?content=6>, (10.10.2007).

H.3. Marriage and partnership

- [112]. Currently, the Romania/Codul familiei [Family Code] defines family in Article 1.3 in gender-neutral terms, ‘based on marriage between spouses’,¹⁴⁶ as provided for by Article 48 of the Constitution.¹⁴⁷ Partnerships are not recognised by Romanian legislation. Though the standing definition of marriage does not exclude same-sex marriage, it has never been used for this purpose and the practitioners agree that the interpretation of the Family Code definition limits the institution of marriage to heterosexual couples. Nevertheless, in the last two years religious and conservative groups have organised attempts to restrict marriage to opposite-sex couples.
- [113]. In 2006, a coalition of religious actors collected signatures for a proposal to modify the Constitution and explicitly introduce a same-sex marriage ban. The Court found unconstitutional the citizens’ initiative but the decision was based on procedural grounds (the initiative did not respect the number and geographical representation for signatures).
- [114]. Recent proposals adopted by the Legal Committee of the Senate to amend the Family Code by establishing a new definition of the family excludes explicitly same-sex-marriages or partnerships.¹⁴⁸ The restrictive definition was adopted by the Senate and will be presented to the Chamber of Deputies.¹⁴⁹
- [115]. The legal regime of same-sex spouses validly married under the laws of another state is not affected as provided for by regulations on international private law.¹⁵⁰

H.4. LGBT people in detention

- [116]. The Romanian Helsinki Committee (APADOR-CH) found in its periodic reports that: prison staff have started to recognise that there are cases of men having sex with men; there are sexual abuses in prisons conducted by inmates and ignored by the guards; the complaint procedures in case of rape are not efficient; in general, there is a lack of protection in complaint procedures; homosexuals are discriminated against by their fellow inmates and this

146 Art. 1.3 Romania/Family Code (4.01.1953).

147 The Constitution of Romania, available at <http://www.cdep.ro/pls/dic/site.page?id=371> (10.01.2008) states in Art. 48: 1) The family is founded on the freely consented marriage of the spouses, their full equality, as well as the right and duty of parents to ensure the upbringing, education and instruction of their children. (2) The terms for marriage dissolution and nullity of marriage shall be established by law. Religious weddings may be celebrated only after the civil marriage. (3) Children born out of wedlock are equal before the law with those born within wedlock.

148 Human Rights Watch, Letter to Romanian Legislators Urging Protection of All Families without Discrimination, available at <http://hrw.org/english/docs/2008/02/07/romani18004.htm> (12.02.2008).

149 Romania/Senat/Legal Committee, Raport XIX/884/2007 on the draft law for amending the Family Code (07.02.2008).

150 See Section B.1 on applicability of Law 105/1992.

treatment is tolerated by the management; sexual education and condoms are absent.¹⁵¹ ACCEPT declared that abuses still exist and that they receive complaints. ACCEPT started monitoring detention facilities and filed a case.¹⁵²

- [117]. Recent regulations create the legal possibility for protection of vulnerable groups, including sexual minorities, who can be accommodated, on request, in special rooms.¹⁵³ There is no assessment on the implementation of this provision and on its effectiveness in combating discrimination and protecting vulnerable groups.

H.5. Sexual and reproductive rights

- [118]. In 2005, the Constitutional Court issued a decision on the draft law on reproductive health and medically assisted reproduction.¹⁵⁴ Among other infringements of the Constitution, the Court also discussed the discriminatory nature of the draft law which excluded individuals who were not in an established relationship from accessing medical reproductive services and reproductive assistance.¹⁵⁵

151 APADOR-CH (2005) 'Sistemul penitenciar în România 1995-2004' [The Penitentiary System in Romania 1995-2004], pp.49-52, available at: <http://www.apador.org>.

152 Interview with Florentina Bocioc, Executive Director of ACCEPT, 02.02.2008.

153 Art. 7.(5) of Romania/ Hotararea Guvernului nr.1897/21.12.2006 pentru aprobarea Regulamentului de aplicare a Legii nr. 275/2006 privind executarea pedepselor si a masurilor dispuse de organele judiciare in cursul procesului penal [Decision for the approval of the Regulations on application of the Law on the execution of punishments and other measures decided by the judiciary during criminal case], (16.01.2007).

154 Romania/ Proiect de lege privind sănătatea reproducerii și reproducerea umană asistată medical, L334/2004, available at: <http://80.97.216.132/senat.proiect.asp?cod=9290&pos=0>.

155 Romania/ DECIZIE nr.418 din 18 iulie 2005 asupra sesizării de neconstituționalitate a Legii privind sănătatea reproducerii și reproducerea umană asistată medical, published in Romania/ Monitorul Oficial nr.664/26 iulie 2005, point 5. See case in Annex 1.

I. Good practices

I.1. Pro-active interventions by the authorities

- [119]. First, the initiation of *ex officio* cases on the ground of sexual orientation by the NCCD contributed to the increased visibility of this institution in the LGBT community and to increased trust among potential victims.¹⁵⁶
- [120]. Secondly, the 2005 public interventions of government officials (including the President of Romania, Traian Basescu, the Minister of Justice at the time, Monica Macovei, and the NCCD¹⁵⁷) who asked the mayor of Bucharest to reconsider his decision not to authorise a gay march led to respect for freedom of assembly but also to increased understanding of the issue.
- [121]. Thirdly, the presence of local police and gendarmerie during the marches organised in 2005-2007, the effective collaboration with ACCEPT (the NGO organising the marches) and the protection secured for participants against mobs of neo-Nazi youngsters, hooligans from football clubs and religious extremists who organised a counter-demonstration entitled Normality March.¹⁵⁸

I.2. Non-discriminatory access to goods and services

- [122]. According to the Anti-discrimination Law, the protection against discrimination based on sexual orientation is guaranteed in all fields of the social sphere, including in relation to access to goods and services. Based on this legal provision, ACCEPT developed three strategic litigation cases both with the NCCD and with the civil courts securing jurisprudential confirmation.¹⁵⁹

156 Romania/CNCD/ Tarom decision, Decision 39, (01.03.2005). See also, Romania/CNCD/ ACCEPT v. the Ministry of Health for the National Institute of Haematology, Decision 337, (21.11.2005) and Romania/CNCD/ ACCEPT v. the Ministry of Health, Decision 260, (29.08.2007).

157 The NCCD issued a press release disapproving of the local authorities' decision and expressing support for the event. The NCCD started an ex officio investigation against the mayor's office to determine whether the decision was discriminatory on the ground of sexual orientation. (www.cncd.org.ro)

158 ACCEPT, Press release, Marsul diversitatii inca un pas spre toleranta (05.06.2006) available at http://accept-romania.ro/index.php?option=com_content&task=view&id=52&Itemid=75 (13.02.2008).

159 See in Annex 1: TAROM Case, DZ v. Distrigaz Sud Case and the Case ACCEPT v. the Ministry of Health on blood donation.

Annex 1 – Case law

Chapter A, the interpretation and/or implementation of Employment Equality Directive 2000/78/EC, case 1

| | |
|---|--|
| Case title | ACCEPT on behalf of B.R. v. A. V., M. I. and Regia Autonoma Piete, Agreement si Salubritate Oradea; Regia Autonoma de Piete, Agreement si Salubritate Oradea (employer), Decision 29 of the NCCD. |
| Decision date | 07.09.2007 |
| Reference details (type and title of court/body; in original language and English [official translation, if available]) | Consiliul National pentru Combaterea Discriminarii [National Council on Combating Discrimination] |
| Key facts of the case (max. 500 chars) | Mr R. B. was harassed and ill-treated by his superiors Mr A. V. and Mr M. I. on the grounds of his presumed homosexuality. Mr M. I. discussed R. B.'s presumed sexual orientation with his colleagues, asked the plaintiff to resign as he was gay and started sanctions against Mr R. B. Mr R. B. filed a complaint with the NCCD with the support of an NGO but, following the investigation visit organised by the NCCD, he was punished and transferred from his work post (Oradea Zoo) to work in the grave yard. |
| Main reasoning/argumentation (max. 500 chars) | The NCCD found that the defendants created a hostile and intimidating environment on the grounds of presumed sexual orientation and retaliated against the plaintiff following the investigation by the NCCD. |
| Key issues (concepts, interpretations) clarified by the case (max. 500 chars) | Discrimination in employment; creating a hostile and intimidating environment on the grounds of presumed sexual orientation; victimisation following the complaint to the NCCD. |
| Results (sanctions) and key consequences or implications of the case (max. 500 chars) | Defendants punished with a fine of 400RON and 1,000 RON (111 Euro and 278 Euro) and an administrative warning was issued to the employer (the local public authority). |

DISCLAIMER: This study has been commissioned as background material for a comparative report on homophobia and discrimination on grounds of sexual orientation by the European Union Agency for Fundamental Rights. The views expressed here do not necessarily reflect the views or the official position of the FRA. The study is made publicly available for information purposes only and does not constitute legal advice or legal opinion.

Chapter A, interpretation and/or implementation of Employment Equality Directive 2000/78/EC, case 2

| | |
|---|---|
| Case title | B. R. Case Sentinta Civila [Civil Judgement] No.620/L.M./2007, File No.6094/111/2006; Tribunalul Bihor Applicant: B. R. represented by ACCEPT; respondents: A. V., administrator of the Oradea Zoo, M. I., human resources manager at the Romania/ Regia Autonoma de Piete, Agreement si Salubritate Oradea, and Romania/ Regia Autonoma de Piete, Agreement si Salubritate Oradea (employer) |
| Decision date | 01.10.2007. The judgement is not final. The appeal is pending before the Oradea Court of Appeal. |
| Reference details (type and title of court/body; in original language and English) | Romania/ Tribunalul Bihor [Bihor Tribunal], acting as court of first instance in a labour dispute. |
| Key facts of the case (max. 500 chars) | B. R. was subjected to discrimination and victimisation by his superiors and by his employer because of his supposed sexual orientation. The acts of discrimination included discriminatory remarks in the presence of his colleagues; B. R. was asked to resign; B. R. was given a disciplinary sanction because he lodged a complaint of discrimination with the equality body (NCCD) which conducted an investigation at his workplace; B. R. was removed from his position at the Zoo and sent to the cemetery, also in the administration of the employer. |
| Main reasoning/argumentation (max. 500 chars) | B. R. was subjected to discrimination, harassment and victimisation by the employer through its representatives (A. V. and M. I.). This was demonstrated by the decision of the NCCD and by the declaration of one witness. The disciplinary sanction and the removal from his position at the Zoo are illegal and void. These behaviours created serious suffering for B. R. which open the way to compensation. |
| Key issues (concepts, interpretations) clarified by the case (max. 500 chars) | Harassment: a systematic treatment, including discriminatory remarks and administrative measures taken against a person because of his alleged sexual orientation. Victimisation: disciplinary sanctioning of an employee when a complaint of discrimination was introduced and the employer indirectly refers to it. The application to the discrimination cases of the civil responsibility principle: the acts of the employees perpetrated at work or in relation to their work fall under the responsibility of the employer. |
| Results (sanctions) and key consequences or implications of the case (max. 500 chars) | The labour decisions sanctioning the plaintiff were declared illegal and void. The payment of 3,000 lei (900 Euro) compensation (for moral damages). Injunction upon the employer to end all discrimination, harassment and victimisation and to present public apologies in front of the Zoo's employees. 50 lei (around 1.50 Euro) civil fine for each day of delaying the injunctions. Since the employer is a public company, the case can be used to lobby the government to include standards of non-discrimination within public companies. |

Chapter A, interpretation and/or implementation of Employment Equality Directive 2000/78/EC, case 3

| | |
|---|---|
| Case title | Tarom decision, Decision 39 |
| Decision date | 01.03.2005 |
| Reference details (type and title of court/body; in original language and English [official translation, if available]) | Consiliul National pentru Combaterea Discriminarii [National Council on Combating Discrimination] |
| Key facts of the case (max. 500 chars) | The NCCD started an ex officio case subsequently joint with a complaint file by two NGOs (ACCEPT and CRL) following the advertisement of a Valentine's Day promotion for services for couples issued by the national flight carrier TAROM. The terms of the promotion specified that only two partners of the opposite sex can buy one ticket and get the second ticket free for selected destinations, as mentioned in an internal note sent by TAROM to all its agents. |
| Main reasoning/argumentation (max. 500 chars) | The NCCD found that, by establishing as a condition that only heterosexual couples can benefit from the promotion, TAROM unjustifiably created an exclusive treatment in relation to homosexual couples and refused access to transportation services. The NCCD noted that, even if there was no intention to discriminate against homosexual couples, the effects of the restriction lead to discrimination. |
| Key issues (concepts, interpretations) clarified by the case (max. 500 chars) | Ex officio NCCD procedures; access to services; relation between intention to discriminate and effect of discriminatory actions. |
| Results (sanctions) and key consequences or implications of the case (max. 500 chars) | Administrative fine of 5,000,000 ROL (143 Euro) and recommendation for the company to organise training on equal opportunities and anti-discrimination principles. |

Chapter A, interpretation and/or implementation of Employment Equality Directive 2000/78/EC, case 4

| | |
|---|--|
| Case title | Asociatia Attitude v. Silviu Manastire, <i>Gazeta de Cluj</i> , Decision No. 207 |
| Decision date | 14.07.2003 |
| Reference details (type and title of court/body; in original language and English [official translation, if available]) | Consiliul National pentru Combaterea Discriminarii [National Council on Combating Discrimination] |
| Key facts of the case (max. 500 chars) | The plaintiff is an NGO with a mission to protect and promote the rights of LGBT people in Romania. The plaintiff complained against an article published in the local newspaper <i>Gazeta de Cluj</i> with the title: 'Homosexuals from Cluj debauch in spaces belonging to the Vatican' which followed another article, 'Public Danger – the Bar Harley Davidson'. |
| Main reasoning/argumentation (max. 500 chars) | The NCCD found that the article established a hostile, degrading and humiliating environment which was hostile to homosexuals and emphasised and repeated debauchery as a way of life for homosexuals, and considered that the author misused his freedom of expression. |
| Key issues (concepts, interpretations) clarified by the case (max. 500 chars) | Creating a hostile, degrading and humiliating environment in the media; abusing freedom of expression through discriminatory messages. |
| Results (sanctions) and key consequences or implications of the case (max. 500 chars) | Administrative fine of 2,000,000 ROL (57 Euro). |

Chapter A, interpretation and/or implementation of Employment Equality Directive 2000/78/EC, case 5

| | |
|---|--|
| Case title | SA v. Ziarul Atac, Decision 231 |
| Decision date | 29.08.2005 |
| Reference details (type and title of court/body; in original language and English [official translation, if available]) | Consiliul National pentru Combaterea Discriminarii [National Council on Combating Discrimination] |
| Key facts of the case (max. 500 chars) | The tabloid <i>Atac</i> published pictures of the plaintiff naked under the title ‘Satana with bare penis’ and with a comment stating that it is important ‘to reveal such a guy who is actually a little girl’ and emphasising the need to disclose all homosexuals as dangerous. |
| Main reasoning/argumentation (max. 500 chars) | The NCCD found that the article promotes a degrading picture of homosexuals by stating that they should be unmasked and that it infringed the right to dignity and the right to privacy of the plaintiff as its aim was to reveal the sexual orientation of the plaintiff. |
| Key issues (concepts, interpretations) clarified by the case (max. 500 chars) | The right to dignity and the right to privacy can be invoked as a justifiable limitation for the freedom of expression. |
| Results (sanctions) and key consequences or implications of the case (max. 500 chars) | The NCCD issued an administrative warning against the tabloid <i>Atac</i> . |

Chapter A, interpretation and/or implementation of Employment Equality Directive 2000/78/EC, case 6

| | |
|---|---|
| Case title | ACCEPT and CRL on behalf of PMG v. priest IS, Decision 16 |
| Decision date | 18.01.2005 |
| Reference details (type and title of court/body; in original language and English [official translation, if available]) | Consiliul National pentru Combaterea Discriminarii [National Council on Combating Discrimination] |
| Key facts of the case (max. 500 chars) | ACCEPT and CRL filed a complaint on behalf of the victim who worked as a singer in the church choir of Biserica Adormirea Maicii Domnului, Braila County. After the religious service, the local priest presented a local newspaper with an announcement of a young gay man seeking a partner, claiming that the announcement belonged to PMG. PMG complained to the Bishop but the priest started to spread rumours in the community that PMG 'goes after men' and convened a local council to investigate the private life of PMG. |
| Main reasoning/argumentation (max. 500 chars) | The NCCD found that the deeds of the priest had the effect of excluding PMG from the local community and from his position as a singer in the church choir and that the priest spread rumours with the effect of restricting the right to privacy and the right to dignity. The NCCD noted that the statements of the defendant were issued <i>nomen proprio</i> , after the religious service and did not represent the position of the Orthodox Church, noting that the hierarchy of the church tried to intervene and mediate in the dispute. In the dissenting opinion, it was underlined that the priest acted as a representative of the Orthodox Church which considers homosexuality as a sin and that the priest is under a religious oath all the time. |
| Key issues (concepts, interpretations) clarified by the case (max. 500 chars) | Autonomy of religious denominations as resulting in observance of internal canon law and anti-discrimination procedures. Analysing the social context in order to assess the impact of discrimination. |
| Results (sanctions) and key consequences or implications of the case (max. 500 chars) | Administrative fine of 10,000,000 ROL (278 Euro). |

Chapter A, interpretation and/or implementation of Employment Equality Directive 2000/78/EC, case 7

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|---|--|
| Case title | ACCEPT v. the Ministry of Health for the National Institute of Haematology, Decision 337 |
| Decision date | 21.11.2005 |
| Reference details (type and title of court/body; in original language and English [official translation, if available]) | Consiliul National pentru Combaterea Discriminarii [National Council on Combating Discrimination] |
| Key facts of the case (max. 500 chars) | The NCCD started an ex officio case following an article published by <i>Adevarul</i> quoting the protestations of an NGO, ACCEPT, on the discrimination of sexual minorities in access to health services (denial to donate blood by the National Institute of Haematology). The National Institute of Haematology confirmed that ‘donors with other sexual orientations are considered a risk group and are permanently excluded from blood donation’. |
| Main reasoning/argumentation (max. 500 chars) | The NCCD found that the permanent exclusion of gay men from donating blood, though objectively justified by a legitimate aim, is illegal as the means chosen are not adequate and necessary. |
| Key issues (concepts, interpretations) clarified by the case (max. 500 chars) | Ex officio NCCD procedures; access to health services; reasonable limitation; limitation of rights should be objectively justified by a legitimate aim and the means to reach that particular aim must be both adequate and necessary. |
| Results (sanctions) and key consequences or implications of the case (max. 500 chars) | The NCCD found discrimination on the grounds of Article 2 of GP 137/2000 but decided that, given the public interest pursued by the defendant, it would issue an administrative warning and recommended to the Ministry of Health that it eliminate all discriminatory provisions from the practice of the National Institute for Haematology and other institutions. The NCCD was supposed to monitor for 90 days the change in practice by the defendant. The case re-emerged in 2007 in the form of a draft Order of the Ministry of Health listing homosexuals among the risk groups prohibited from donating blood and including a questionnaire for prospective blood donors inquiring about whether they have had homosexual relations. |

Chapter A, interpretation and/or implementation of Employment Equality Directive 2000/78/EC, case 8

| | |
|---|---|
| Case title | ACCEPT v. the Ministry of Health, Decision 260 |
| Decision date | 29.08.2007 |
| Reference details (type and title of court/body; in original language and English [official translation, if available]) | Consiliul National pentru Combaterea Discriminarii [National Council on Combating Discrimination] |
| Key facts of the case (max. 500 chars) | The NCCD started an ex officio case, subsequently joint with a complaint file by ACCEPT, based on a draft Order of the Ministry of Health on blood donation which mentioned in the questionnaire specific questions for men (whether they had had sexual relations with other men) and for women (whether their partners had had sexual relations with other men) and establishing criteria for permanent exclusion from blood donations: the Order states that homosexuals are permanently excluded from blood donations as ‘their sexual behaviour poses them in a group of high-risk for dangerous infectious diseases’. |
| Main reasoning/argumentation (max. 500 chars) | The NCCD found that the permanent exclusion of gay men from donating blood is not objectively justified by a legitimate aim. The donated blood is tested and sexual orientation of the donor is irrelevant. In this particular context, the sexual habits are more relevant. |
| Key issues (concepts, interpretations) clarified by the case (max. 500 chars) | Ex officio NCCD procedures; access to health services; reasonable limitation; limitation of rights should be objectively justified by a legitimate aim. |
| Results (sanctions) and key consequences or implications of the case (max. 500 chars) | The NCCD found discrimination on the grounds of Article 2 of the GP 137/2000 but did not issue an administrative warning. However, it recommended that the Ministry of Health eliminate all discriminatory provisions in the draft of the Order on blood donations. |

Chapter B, Freedom of movement, case law relevant to Directive 2004/38/EC - no case law is available.

Response 2150194 of the Romanian Office for Immigration, 25.01.2008, on file with FRALEX.

Chapter C, Asylum and subsidiary protection, case law relevant to art 10/1/d of Council Directive 2004/83/EC - no case law is available as the ROI reports having received no applications on ground of sexual orientation.

Response 2150194 of the Romanian Office for Immigration, 25.01.2008, on file with FRALEX.

Chapter C, Asylum and subsidiary protection, case law relevant to art 2/h of Council Directive 2004/83/EC - no case law is available as the legislation does not cover same-sex partners as members of the family.

Response 2150194 of the Romanian Office for Immigration, 25.01.2008, on file with FRALEX.

Chapter D, Family reunification, case law relevant to art 4/3 of the Council Directive 2003/86/EC - no case law is available.

Response 2150194 of the Romanian Office for Immigration, 25.01.2008, on file with FRALEX.

Chapter E, Freedom of assembly - no case law is available

Chapter F, Hate speech - no case law is available.

Response of the General Prosecutor No. VIII-1 from 25.01.2008, response of the Supreme Council of Magistrates No. 28517/1154/2007 from 15.01.2008 and response of the Ministry of Justice No.146817 from 21.12.2008, on file with FRALEX.

Chapter F, Hate crimes - no case law is available.

Response of the General Prosecutor No. VIII-1 from 25.01.2008, response of the Supreme Council of Magistrates No. 28517/1154/2007 from 15.01.2008 and response of the Ministry of Justice No.146817 from 21.12.2008, on file with FRALEX.

Chapter G, Applicability of legislation on transgender issues.

Chapter G, Name change and/or sex change of transgender people, relevant case law, case 1

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|---|--|
| Case title | Case of D. Sentinta Civila [Civil Judgement] nr.1656/23.02.2006 of the Romania/Judecatoria Sectorului 2 Bucuresti [Bucharest Second District's First Instance Court]; File No.1338/300/2004 (Old number 1721/2004) |
| Decision date | 23.02.2006 |
| Reference details (type and title of court/body; in original language and English [official translation, if available]) | Romania/Judecatoria Sectorului 2 Bucuresti [Bucharest Second District's First Instance Court] |
| Key facts of the case (max. 500 chars) | D. wanted to change her sex from female to male. She introduced a civil case in 2001 which was not successful. In 2004 she introduced another civil case against Bucharest Second District's Local Council asking for the authorisation for the sex change and the change of her name accordingly. The court asked for an expert report from the National Institute of Legal Medicine (NILM). The expert report was provided after five months. It stated that, taking into consideration D's situation, the sex-change operation is not the only treatment for her condition. Consequently, it issued a series of recommendations to be observed for a period of one year and after that the NILM allowed a re-evaluation. In 2006, the re-evaluation report allowed the sex-change operation. Consequently, the court decided in this sense. |
| Main reasoning/argumentation (max. 500 chars) | The request for a sex change and change of name is based on the following legal provisions: Article 26 paragraph (2) and Article 34 of the Constitution, Article 44, letter (i) and Article 57-58 of the Law 119/1996, Article 8 of the European Convention on Human Rights. |
| Key issues (concepts, interpretations) clarified by the case (max. 500 chars) | The nature of the case is contradictory – the respondent is the local council in the area of the person's domicile. The court based its decision on forensic medical expertise. This expertise could only be provided by the NILM. The commission of experts recommended the person a period of time to think about the decision etc without having clear, scientific standards to be used or a predictable procedure to be observed. During this time the case was pending before the court. |
| Results (sanctions) and key consequences or implications of the case (max. 500 chars) | The court authorised the sex change and the change of name. The court asked the Bucharest Second District's Local Council to make the modifications in the civil status documents of D. The civil case took two years. |

Chapter H, Miscellaneous, relevant case law 1

| | |
|---|--|
| Case title | T. M. v Ministry of Justice, National Administration of Penitentiaries, Ministry of Administration and Internal Affairs, General Inspectorate of the Romanian Police, Constanta County Inspectorate of Police |
| Decision date | Pending – File No. 19148/300/2006 |
| Reference details (type and title of court/body; in original language and English [official translation, if available]) | Civil action – request for compensation and general measures; Judecatoria Sectorului 2 Bucuresti [Bucharest Second District’s First Instance Court] Applicant: T. M. Respondents: Ministry of Justice, National Administration of Penitentiaries, Ministry of Administration and Internal Affairs, General Inspectorate of the Romanian Police, Constanta County Inspectorate of Police. Third-party intervention: ACCEPT. |
| Key facts of the case (max. 500 chars) | T. M. was in detention during 2004-2005 in several penitentiaries. In some of them he claims to have been subjected to ill treatment by inmates who abused him sexually and by the staff who did not protect him against such treatment. Although T. M. alleges complaining to one of the supervisors regarding this treatment, there was no official registration of the complaint and no measures were taken. According to his medical records, T. M. repeatedly mutilated himself during detention. |
| Main reasoning/argumentation (max. 500 chars) | Reasoning of the Applicant: T. M. suffered physical and moral damage because of the lack of action on the part of the authorities. He also suffered from exposure to discrimination and inhuman and degrading treatment due to the systematic failure of the authorities to ensure their positive obligation to protect his physical integrity, dignity and private life. Reasoning of the Respondents: the Applicant had access to all procedures and rights guaranteed for all detainees without discrimination. There was no complaint registered by the applicant during detention. |
| Key issues (concepts, interpretations) clarified by the case (max. 500 chars) | Key issues introduced by the Applicant: the lack of effective complaints procedures within the penitentiary system seriously infringes human rights. Sexual minorities are at particular risk in such a system. The segregation, discrimination and abuse against sexual minorities or people allegedly associated with homosexuals are tolerated by prison staff which amounts to infringements of various human rights. |
| Results (sanctions) and key consequences or implications of the case (max. 500 chars) | The Applicant asked for: 50,000 Euro compensation; an injunction upon the respondent authorities to adopt and implement institutional measures against discrimination of T. M. and future discriminations; civil damages and civil fine for each day of delaying the fulfilment of institutional measures that will be ordered by the court. |

Chapter H, Miscellaneous, relevant case law, case 2

| | |
|---|---|
| Case title | Reproductive Rights Case - Romania/ Decizie nr. 418/18.07.2005 asupra sesizării de neconstituționalitate a Legii privind sănătatea reproducerii și reproducerea umană asistată medical [Decision No.418/18.07.2005 on the notification of non-compliance with the Constitution of the Law on reproductive health and medically assisted reproduction]; Constitutional Review of a Draft Bill at the request of the President of Romania – File No.545A/2005. |
| Decision date | 18.07.2005 |
| Reference details (type and title of court/body; in original language and English [official translation, if available]) | Romania/ Curtea Constituțională a României [Constitutional Court of Romania]. |
| Key facts of the case (max. 500 chars) | In 2005 the Parliament adopted a draft law on reproductive health and medically assisted reproduction containing many provisions that were not in compliance with fundamental rights stated in the Romanian Constitution. One of the issues referred to the subjects of the right to access reproductive medical services and assistance recognised by the law. Though in the general part of the draft this right was recognised to any person, the rest of the draft only referred to couples, denying the right in the case of people who are not in a couple. |
| Main reasoning/argumentation (max. 500 chars) | The draft creates a privilege for individuals who are part of a couple and, at the same time, discrimination against individuals who are not in a couple. This amounts to a violation of the principle of equality before the law and before the public authorities stated in Article 16 of the Constitution. The existence of an agreement between the couple to access medically assisted reproduction services is an essential condition for the existence of the right to access this service which is against Article 16.(1) of the Constitution. |
| Key issues (concepts, interpretations) clarified by the case (max. 500 chars) | The Court recognises: the right of access to medically assisted reproduction services and assistance as a right according to the bill; the marital/couple status as a ground of discrimination in access to medically assisted reproduction services; that the requirement to have an agreement between the couple is in itself excluding the exercise of the right for a category of people – those who are not in a couple. |
| Results (sanctions) and key consequences or implications of the case (max. 500 chars) | Two thirds of the provisions of the bill were found to be in violation of the Constitution. The Court returned the draft to the Senate for amendments to make it comply with the Constitution. Because the violations affected the philosophy of the law in itself, the bill was rejected by the Senate. |

Chapter I, Case law relevant to the impact of good practices on discrimination on the ground of sexual orientation, case 1

| | |
|---|--|
| Case title | D. Z. v. Distrigaz Sud, Decision 4222 in File no.710/4/2006 |
| Decision date | August, 1st, 2007 |
| Reference details (type and title of court/body; in original language and English [official translation, if available]) | Judecătoria sectorului 4 București [First instance court No.4, Bucharest] |
| Key facts of the case | The plaintiff complained of being subjected to discriminatory conduct based on his affiliation to an NGO defending the rights of LGBT people in Romania (ACCEPT București). The plaintiff is employed by the NGO and when he went to pay the monthly bill to the defendant, employees of the defendant subjected him to degrading remarks. The plaintiff sought civil damages and asked the court to order the defendant to take institutional measures to preclude discriminatory behaviour in the future, to include in its internal norms a specific prohibition of discrimination on all grounds and to train its employees on anti-discrimination provisions. |
| Main reasoning/argumentation | The court defined 'interest' in conjunction with 'the practical gain obtained'. The interest must exist, be personal, real and actual and legal. The plaintiff proved the existence of the facts entailing an act of discrimination but the defendant did not prove that the facts proved are not discriminatory. |
| Key issues (concepts, interpretations) clarified by the case | The court clarified the concept of the liability of the employer for the actions of its employees under the anti-discrimination legislation in conjunction with the provisions of the Civil Code for torts. The court also discussed the issue of system remedies such as the institutional measures on combating discrimination and diversity management policies or the training requested by the plaintiff as a possible remedy. In deciding, the court also offered an explanation of the concept of reversal of the burden of proof, linking it to accessibility of evidence. |
| Results (sanctions) and key consequences or implications of the case | The defendant was ordered to pay 1,000 Euro in civil damages but the Court considered that there was no interest for the plaintiff to request institutional measures on combating discrimination in the workplace. The decision was appealed both by the defendant and by the plaintiff. |

Annex 2 – Statistics

Chapter A, Implementation of Employment Directive 2000/78/EC in relation to sexual orientation

| | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 |
|---|------|------|------|-------------------------------------|------|--|--|-----------------------------------|
| Total complaints of discrimination on the ground of sexual orientation (equality body, tribunals, courts etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods and services etc.) | N/A | N/A | 1 | 5 | 6 | 9 | 6 | 7 |
| Total finding of Discrimination confirmed (by equality body, tribunals, courts etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods and services etc.) | N/A | N/A | 0 | 1 : use of discriminatory language | 0 | 3: 1. use of discriminatory language, 2. access to services, 3. discriminatory language in the media | 1 (employment) | 1 (harassment by the gendarmerie) |
| National Number of sanctions/compensation payments issued (by courts, tribunals, equality bodies etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods and services etc.) | N/A | N/A | 0 | 1 : fine of 2,000,000 ROL (55 Euro) | 0 | 1. Fine of 5,000,000ROL (143 Euro), 2. fine of 10,000,000 ROL (286 Euro) and 3. administrative warning | Fines of 400 (111 Euro) and 1,000 RON (278 Euro) against two perpetrators and warning against the public authority in charge | Warning |

| | | | | | | | | |
|---|-----|-----|---|-----|-----|-----|-----|-----|
| National range of sanctions/compensation payments (by courts, tribunals, equality bodies etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods and services etc.) | N/A | N/A | 0 | N/A | N/A | N/A | N/A | N/A |
|---|-----|-----|---|-----|-----|-----|-----|-----|

Chapter B, Freedom of movement of LGBT partners

| | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 |
|---|------|------|------|------|------|------|------|------|
| Number of LGBT partners of EU citizens residing in your country falling under Directive 2004/38/EC (i.e., LGBT partners having exercised their freedom of movement as granted to family members of EU citizens, whether under Directive 2004/38/EC or under previous instruments) | - | - | - | - | - | - | - | - |
| Number of LGBT partners who claimed their right to residence but were denied this right | - | - | - | - | - | - | - | - |

Chapter C, Asylum and subsidiary protection, protection due to persecution on the grounds of sexual orientation

| | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 |
|--|------|------|------|------|------|------|------|------|
| Number of LGBT individuals benefiting from asylum/ subsidiary protection due to persecution on the ground of sexual orientation. | N/A* | N/A | N/A | N/A | N/A | N/A | N/A | N/A |
| Number of LGBT individuals who were denied the right to asylum or to subsidiary protection despite having invoked the fear of persecution on grounds of sexual orientation | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A |

* Response 2150194 of the Romanian Office for Immigration, 25.01.2008, on file with FRALEX.

Chapter C, Asylum and subsidiary protection, protection of LGBT partners

| | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 |
|---|------|------|------|------|------|------|------|------|
| Number of LGBT partners of persons enjoying refugee/ subsidiary protection status residing in your country falling under Art 2/h Directive 2004/83/EC | - | - | - | - | - | - | - | - |
| Number of LGBT partners of persons enjoying refugee/subsidiary protection status who were denied the possibility to stay with their partner | - | - | - | - | - | - | - | - |

* Response 2150194 of the Romanian Office for Immigration, 25.01.2008, on file with FRALEX.

Chapter D, LGBT partners benefiting family reunification

| | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 |
|--|------|------|------|------|------|------|------|------|
| Number of LGBT partners of third country nationals residing in your country benefiting from family reunification. | - | - | - | - | - | - | - | - |
| Number of LGBT partners of third country nationals residing in your country who were denied the right to benefit from family reunification | - | - | - | - | - | - | - | - |

Chapter E, LGBT people enjoyment of freedom of assembly

| | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 |
|--|------|------|------|------|------|------|------|------|
| Number of demonstrations in favour of tolerance of LGBT people, gay pride parades, etc | 0 | 0 | 0 | 0 | 0 | 1 | 1 | 2 |
| Number of demonstrations against tolerance of LGBT people. | 0 | 0 | 0 | 0 | 0 | 2 | 2 | 2 |

Chapter F, Homophobic hate speech

| | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 |
|--|------|------|------|------|------|------|------|------|
| | | | | | | | | |

| | | | | | | | | |
|--|-------|-------|-------|-------|-------|-------|---|-------|
| Number of criminal court cases regarding homophobic hate speech initiated (number of prosecutions) | N/A | N/A | N/A | N/A | N/A | N/A | 0 They do not make a distinction on grounds of discrimination. | 0 |
| Number of convictions regarding homophobic hate speech (please indicate range of sanctions ordered) | N/A | N/A | N/A | N/A | N/A | N/A | Not registered by the authorities (NReg.) | NReg. |
| Range of sanctions issued for homophobic hate speech | N/A | N/A | N/A | N/A | N/A | N/A | NReg. | NReg. |
| Number of non-criminal court cases initiated for homophobic statements | NReg. | NReg. | NReg. | NReg. | NReg. | NReg. | NReg. | NReg. |
| Number of non-criminal court cases initiated for homophobic statements which were successfully completed (leading to a decision in favour of the plaintiff, even if no sanctions other than symbolic were imposed) | NReg. | NReg. | NReg. | NReg. | NReg. | NReg. | NReg. | NReg. |

Chapter F, Homophobic motivation of crimes as aggravating factor

| | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 |
|---|------|------|------|------|------|------|---|-------|
| Number of criminal court decisions in which homophobic motivation was used as an aggravating factor in sentencing | N/A | N/A | N/A | N/A | N/A | N/A | Not registered by the authorities (NReg.) | NReg. |

Chapter G, Transgender issues

| | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 |
|---|--|------|------|------|------|------|------|------|
| Number of name changes effected due to change of gender | 1 | 1 | 0 | 0 | 1 | 0 | 1 | 2 |
| Number of persons who changed their gender/sex in your country under the applicable legislation | Non response from the authorities (NR) | | NR | NR | NR | NR | NR | NR |